THE EXEMPTION FROM TAXATION OF THE REAL ESTATE OF COLLEGES AND OTHER CHARITIES

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

vs.

ASSESSORS OF CAMBRIDGE

ON February 24, 1897, *the Full Bench of the Supreme Judicial Court of Massachusetts rendered its decision in the case of Williams College v. Assessors of Williamstown, which is reported in Vol. 167 Mass. Reports, page 505, wherein the Court held that certain lots of land, with the dwelling-houses thereon, owned by Williams College and occupied by its professors and other officers, were not exempted from taxation under the laws of this Commonwealth.*

It was because of this decision that the City of Cambridge assessed a tax for the year 1897 upon certain houses and lots belonging to Harvard College and occupied by its president, professors, and students, which had never been taxed before, but had always been treated by the College and the City of Cambridge as exempt from taxation under the laws of this Commonwealth.

The College paid the taxes on this property under

protest, and made application to the assessors for abatement thereof, and, upon their refusal to abate, appealed to the Superior Court. The case was submitted to Mr. Justice Bell of the Superior Court upon an agreed statement of facts which is set forth in his report. Judge Bell decided that the several properties were exempt from taxation, and by consent of the parties reported the case to the Supreme Judicial Court for its decision. The Judge's report is as follows : —

REPORT

This action is a petition for abatement of certain taxes assessed upon certain properties of the petitioners as hereinafter appears.

The petition may be referred to.

It is not claimed in this case that the taxes are excessive, but the petitioners claimed that the properties are exempt from taxation under the provisions of clause three, section five, chapter eleven of the Public Statutes, as amended by Statutes of eighteen hundred and eighty-nine, chapter four hundred and sixty-five.

The case was heard before me without a jury upon the following agreed statement of facts, and no other evidence was submitted : —

Agreed Facts

The following are agreed to be the facts in this case : —

The appellants are a corporation established under the laws of this Commonwealth, and a literary, benevolent, charitable, and scientific institution within the meaning of the provisions of Public Statutes, chapter 11, section 5, clause 3, as amended by chapter 465 of the Acts of 1889.

On the first day of May, 1897, the appellants were the owners of certain property situated in said Cambridge, and were liable to taxation therefor; they filed with the

assessors of said Cambridge within the time specified by them a full and accurate list in due form of all their estate which they considered liable to taxation in Cambridge; they were also on said first day of May, 1897, the owners of certain other property, viz.: real estate, situated in Cambridge, which they contend is exempted from taxation under the provisions of Public Statutes, chapter 11, section 5, clause 3, as amended by chapter 465 of the Acts of 1889, because said property, they contend, is occupied by the appellants or their officers for the purposes for which they were incorporated; that the appellants also filed with said assessors within the required time a true list of all real and personal estate held by them for literary, benevolent, charitable, and scientific purposes, together with a statement of the amount of all receipts and expenditures for said purposes during the year next preceding said first day of May. The real estate, which the appellants now contend is exempted from taxation as aforesaid, is briefly described as follows: —

No. 17 Quincy Street,
No. 17 Kirkland Street,
No. 11 Quincy Street,
No. 16 Quincy Street,
No. 25 Quincy Street,
No. 37 Quincy Street,
No. 38 Quincy Street,
No. 11 Frisbie Place.

The assessors of Cambridge assessed a tax for the year 1897 upon this real estate amounting to $2817.50, and a tax bill demanding payment of the same, and dated September 1, 1897, was received by the appellants, who paid said tax under written protest on October 7, 1897. Within six months after the date of said tax bill the appellants applied to the assessors for an abatement of said tax.

On January 21, 1898, the assessors in writing notified the appellants that they refused to abate said tax or any part of it.

On February 12, 1898, the appellants gave notice that they appealed from said decision, and on March 7, 1898, which was the first return day occurring after thirty days from the date of the assessors' said notice, the appellants entered their appeal in this court.

The several houses and lots of land in question in this case, with the specific assessments on each in the year 1897, and the mode of its occupation, are as follows: —

1. 17 Quincy Street,
   32,000 feet of land assessed at $19,000
   House assessed at 16,000

   $35,000 Tax, $612.50

The land upon which stands house No. 17 Quincy Street, as well as houses Nos. 11, 25, 37, on said street, hereinafter to be mentioned, was conveyed to the President and Fellows of Harvard College in 1835.

This land was not a part of the original college yard, but was made a part thereof after the purchase aforesaid by removing the fences and monuments which had hitherto separated the same, thus making the said land and the college yard one large field, upon which stood these several houses without any dividing fences between the same.

The house No. 17 Quincy Street was built in 1860–61, from the gift of $10,000 and accumulated income made April 14, 1846, by Peter C. Brooks, who said in his letter of gift, "It is my wish that this sum should be expended in aid of the erection of a dwelling-house for the president of the university and his successors whenever it may be the desire of the present president that a new house should be built."

All additions and repairs upon this house were paid for from this gift and accumulations until it was all spent, and since then such repairs and additions have been paid for by the college.

The premises are kept in order and repair, including grading, graveling walks, fertilizing, and repairing and cleaning the furnace, removal of ashes, etc., under the direction of the college superintendent of buildings and the superintendent of grounds, at the college expense, and for the most part by the college employees. Outside repairs are made by the superintendents as may seem best to them without waiting for the request of the occupant; inside repairs are made by them upon the occupant's request.

The house is occupied by the president of the university and his family. He receives as such president a salary and pays no rent or compensation for the use and occupation of this house. He has no lease of said house, but occupies it if he so chooses so long as he performs the duties of the office of president. Partly for his own convenience and partly for the convenience of the college, the drawing-room and hall are used for meetings of the faculty and committees, for conferences with university officers and students, for calls on university business, and the meeting of the corporation at which degrees are voted annually, and all the lower floor, except possibly the kitchen, is used for Class Day, Commencement, and other receptions, and for many hospitalities incident to the president's functions.

The rest of the house is used by the president and his family as a dwelling-house, consists of the usual living and housekeeping rooms and chambers, and no other use than as hereinbefore stated is made of it.

The president is required by statute of the university to live in Cambridge.

Since the house was built the presidents have lived in

it in manner aforesaid, but neither the house or the land upon which it stands was ever assessed or taxed to the college until the year 1897, nor were the other houses and lands hereinafter mentioned assessed or taxed to the college prior to the year 1897.

2. No. 17 Kirkland Street,
Assessed 1897, 30,475 feet of land at $18,000
House at 6,000

$24,000 Tax, $420

The correct area of this land is 28,953 square feet. The estate was conveyed to the President and Fellows of Harvard College on May 25, 1889. The main part of the building is used above the lower story as a college dormitory, and it is in charge of a resident proctor. The college at its own expense, by its superintendents, janitor, and employees, attends to the whole of the repairs, the daily care, cleaning, making beds, removing ashes, etc., of this part of the building; the students hire these rooms of the college and are charged in their term bills stated sums therefor, which amounted in the year 1897 to the gross sum of $975.

The college also attends to all the outside repairs upon the whole building, the cutting of grass, trimming of trees, raking and removal of leaves and rubbish, graveling of walks, grading, etc., of the whole lot. Over the ell in the rear the three rooms are used for the sleeping rooms of the servants employed in the building.

The lower story of the building is assigned as a refectory for the Foxcroft Club, an association of students of the university organized for the purpose of obtaining wholesome food at cost. The college receives no rent or compensation in any form for the use of this estate by the Foxcroft Club. The college pays the bills of the

club on the approval of the officers of the club, charging interest on money so advanced to the date of repayment, and collects on regular college term bills these charges against the students for their board. The daily care of and repairs upon the part of the building used by the club are attended to by the club at its expense, except that glazing and outside repairs are attended to by the college at the college expense.

The club has had no lease or fixed term of use; it has hitherto used the premises without charge.

3. No. 11 Quincy Street,
Assessed 1897, 18,000 feet of land at $14,000
House at 5,000

$19,000 Tax, $332.50

Since 1893 this house has been occupied by Professor George H. Palmer and his wife. Professor Palmer is Alford Professor of Natural Religion, Moral Philosophy, and Civil Polity. Partly for his convenience and partly for the convenience of the college, the drawing-room and hall in said house are used for regular college exercises during the college year, and also for interviews with college students and instructors upon business of the university. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers.

The premises are cared for at the expense of the college in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When in the fall of the year the salary of Professor Palmer for the current college year is voted, it is fixed at a certain sum "and the use of house $750," otherwise Professor Palmer pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

4. No. 16 Quincy Street,
Assessed 1897, 11,600 feet of land at $6,600
House at 5,400

$12,000 Tax, $210

This estate contains 10,940 square feet of land and was conveyed to the President and Fellows of Harvard College as a gift by Henry C. Warren, April 19, 1892.

Since 1892 this house has been occupied by Assistant Professor F. C. de Sumichrast and family. This professor is the head of the department of French and Chairman of the Freshman Advisers Committee of the Faculty of Arts and Sciences. This is a large committee of about twenty persons, each of whom has charge of a section of the Freshman Class. As such chairman, partly for his own convenience and partly for the convenience of the committee, the professor has a great number of interviews at this house with students and parents in his drawing-room, and this room and the hall adjoining is also thus used for meetings of the committee and for other college purposes incident to his several duties. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers.

The premises are cared for and kept in repair at the expense of the college in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When in the fall of the year his salary is voted, it is fixed at a certain sum "and the use of house $500," otherwise the professor pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

5. No. 25 Quincy Street,
Assessed 1897, 28,000 feet of land at $16,000
House at 8,000

$24,000 Tax, $420

This house was occupied in 1897 and prior thereto by Professor N. S. Shaler and family. Professor Shaler is Professor of Geology, Dean of the Lawrence Scientific School, Chairman of Committees of the Faculty of Arts and Sciences on Reception of Students, Summer Courses, Admission to the Scientific School from other scientific schools, Advisers of Scientific Students, and Four Year Courses in Scientific School, and Chairman of the Board of Examination Proctors.

In 1892 the college at its own expense made additions and improvements on the first floor of the house, which made it more convenient for the transaction of college business and the entertaining of guests on college account. The drawing-room and hall and additions are used for different college purposes incident to the several duties of Mr. Shaler. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers. The premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street. When in the fall of each year the salary of Professor Shaler is voted, it is fixed at a certain sum "and the use of house $1000," otherwise Professor Shaler pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor and dean.

6. No. 37 Quincy Street,
Assessed 1897, 18,000 feet of land at $11,000
House at 6,000

$17,000 Tax, $297.50

This house was built by the college in 1849, and in 1897 and prior thereto was occupied by C. C. Langdell, Dane Professor of Law, and his family. It is cared for and kept in repair at the expense of the college, in

the same manner and to the same extent as is above described in relation to No. 17 Quincy Street. When his salary is voted in the fall of the year, it is fixed at a certain sum "and the use of house $700," otherwise Professor Langdell pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

7. No. 38 Quincy Street,
Assessed 1897, 10,000 feet of land at $6,000
House at 6,000

$12,000 Tax, $210

These premises contain 21,149 square feet of land. This estate has not been assessed or taxed from the time of its acquisition by the college until the year 1897, except that about one half of the land in the whole lot is reported for taxation by and taxed to the college as unused land, and the other half is now taxed as above by the assessors.

This estate was conveyed to the President and Fellows of Harvard College as a gift from Henry C. Warren, January 28, 1892, with the request of the donor that no brick or stone building be erected on the premises during his life without his consent in writing, or after his death without the similar consent of any person named by him, if then living in the same house as at the time of the gift.

This house in 1897 was occupied by Professor John H. Wright, Professor of Greek and Dean of the Graduate School, and his family. The drawing-room and hall therein are used for different college purposes incident to his duties, partly for his own convenience and partly for the convenience of the college. The rest of the house is used by him and his family, and consists of the usual living and housekeeping rooms and chambers. The

premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When his salary is voted in the fall of each year it is fixed at a certain sum "and the use of house $900," otherwise Professor Wright pays no rent and has no other agreement for his use and occupation of said house, but uses it as such professor and dean.

8. No. 11 Frisbie Place,
Assessed 1897, 20,000 feet of land at $8,000
House at 10,000

$18,000 Tax, $315

This is a part of the land conveyed to the college by Charles and Charlotte Saunders by deed dated September 1, 1863.

This house in 1897 was occupied by James Barr Ames, Bussey Professor of Law and Dean of the Law School, and his family. The drawing-room therein and hall adjoining are used for different college uses and purposes incident to his duties, partly for his own convenience and partly for the convenience of the college. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers. The premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When his salary is voted in the fall of the year, it is fixed at a certain sum "and the use of house $700," otherwise Professor Ames pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor and dean.

The several deans herein mentioned are charged each

with a portion of the administrative duties which formerly devolved exclusively on the president.

Upon the facts as above agreed I ruled that I was authorized to find, and did therefore find, that the several properties therein referred to are exempt from taxation and found for the petitioners in the sum of twenty-nine hundred twenty-two and fifty hundredths (2922.50) dollars principal, and interest thereon from October 7, 1897, to wit: the sum of two hundred sixty-seven and ninety hundredths (267.90) dollars, in all thirty-one hundred ninety and forty hundredths (3190.40) dollars.

The respondents being aggrieved by said decision duly excepted thereto, and by consent of the parties the case is reported to the Supreme Judicial Court for its decision.

If the court shall determine that either of the said properties is exempt from taxation, judgment shall be entered thereupon for the petitioners for the tax assessed upon such property and interest from October 7, 1897; otherwise judgment shall be entered for the respondent upon such of said properties as are so determined not to be exempt from taxation.

CHARLES U. BELL, J. S. C.

ON November 16, 1899, *the case was argued before the Full Bench of the Supreme Judicial Court, which consisted of Chief Justice Holmes and Justices Barker, Morton, Lathrop, Hammond, and Loring. Mr. Samuel Hoar, on behalf of Harvard College, and Mr. Gilbert A. A. Pevey, on behalf of the Assessors of Cambridge, argued the case upon the following printed briefs: —*

BRIEF FOR HARVARD COLLEGE

Early History of the College

Harvard College was founded in 1636 by a vote of the General Court of the Colony of Massachusetts Bay, which convened on September 8 of that year. The language of the order was as follows: —

> The Court agree to give Four Hundred Pounds towards a school or college, whereof Two Hundred Pounds shall be paid the next year and Two Hundred Pounds when the work is finished, and the next Court to appoint where and what building.

In 1637 the General Court appointed twelve of the most eminent men of the Colony "to take order for a college at Newtown."

In 1638 the name Newtown was changed by the General Court to Cambridge, in recognition of the English university, where many of the Colonists had been educated. In the same year, after the gift of John Harvard, the college was given the name of Harvard.

In 1642 the general government of the college and the management of its funds were placed in the hands of a Board of Overseers by act of the General Court.

In 1650 a charter was granted to the college by which the college was made a corporation consisting of a President, five Fellows, and a Treasurer, to be called by the name of the President and Fellows of Harvard College.

The term "university" was first applied to Harvard College in 1780, in the Constitution of the Commonwealth of Massachusetts, which ratified and confirmed to the president and fellows all their vested powers, rights, and immunities.

The general purpose of the formation of the college is declared to be for the "advancement and education of youth in all manner of good literature, arts, and sciences" (Charter, May 31, 1650). Nowhere in the statutes are the terms "college" or "university" defined, but the president and fellows are given power to make such "orders and by-laws for the better ordering and carrying on the work of the college as they shall think fit" (Charter).

The term "college," however, had a very definite meaning in the minds of the early Colonists, as many of the leading men among them had been educated in English colleges. And inasmuch as the General Court changed the name of the college town from Newtown to Cambridge, in recognition of one of the great English universities, we must believe that its members had in mind the great universities of England as models for the new college in New England. An examination into the constitution and scope of the English universities, and the colleges of which they are aggregations, ought to help us to understand what, in the minds of the founders of Harvard University, could properly be done "in carrying on the work of the college," or in the language of the statute under consideration, in carrying out "the purposes for which they were incorporated."

> The colleges, it must be distinctly kept in mind, were primarily convictoria, or boarding-houses.
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> Vol. I., V. A. Huber, English Universities, p. 178.

Hammersley, J., says in the case of Yale University *v.* New Haven : —

> As first used, " college " indicated a place of residence for students, and occasionally a " *universitas*," or " *studium generale*." . . . A suggestion of the modern university appears in the College and Library of Alexandria founded and endowed by Ptolemy Soter. Here the Museum provided from the first lodgings and refectory for the professors, and later similar provisions were made for the students. . . . At first little more than lodging rooms and refectory, they [colleges] grew, especially in England, to be the home of students for all purposes. The instruction and discipline of the university were through the colleges. . . . With changes in conditions, the college was largely eliminated from the Continental universities, while in England the university became practically the associated colleges. Merton College, Oxford, founded in 1264, was the prototype of the English college. That college consisted of the chapel, refectory, and dormitories. . . . As Newman says, the university, to enforce discipline, developed itself into colleges, and so the term " college " was taken to mean a place of residence for the university student, who would there find himself under the guidance and instruction of superiors and tutors bound to attend to his personal interest, moral and intellectual. See *passim* 3 Newman, Hist. Sketches ; Lyte's History of University of Oxford ; 1 & 2 Huber, English Universities ; Enc. Brit. " Universities." . . . And so at the beginning of the seventeenth century the students of an English university lived in colleges, were instructed and governed through colleges, whether the university included a number of colleges or a single college, and among the buildings indispensable for every college were the great hall or dining-room, and the living rooms or dormitories.
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> Yale University *v.* New Haven, 71 Conn. 316.

See also History of University of Oxford, G. C. Broderick, Ch. II., 18–20.

From Atkinson and Clark's " History of the University of Cambridge " (p. 243) it appears that the colleges originally were lodging-houses for the master and fellows, and that the students came in afterwards.

At Oxford by Statute of 1432 all members of the university were required to be inmates of some college or hall, except those who should be especially licensed by the Chancellor to live in lay houses.

Broderick, Hist. of Un. of Oxford, pp. 61, 62.

Thus at the time that Harvard College was founded the English colleges were communities of fellows and scholars, each housing and feeding its own members, including the master or head or president, and each with the necessary officers, servants, buildings, and equipment for attending to the physical wants of its inmates ; and in the buildings of which an English college usually consisted we find the president's chamber, the fellows' rooms, scholars' rooms, warden's lodgings, the treasury, the library, the chapel, the hall or commons, buttery, kitchen, brewery, storehouse, offices, and stables.

C. Grant Robertson, University of Oxford, All Souls, chap. I.
Stokes' University of Cambridge, Corpus Christi, chap. II.
Gray's Queen's College, chap. II. and VII.
Broderick's Hist. of University of Oxford, chap. II.

And in like manner Harvard College, from its foundation, was a community of teachers and students living in the college, housed and fed by the college. In College Book Number Three of the Records of Harvard College, the first step taken to build the College in accordance with the vote of the General Court of the Colony of Massachusetts Bay, in 1636, is recorded in the following language : —

> Mr. Nathaniel Eaton was chosen Professor of said School in the year one thousand six hundred and thirty-seven, to whom the care and management of the donations before mentioned were intrusted, for the erecting of such edifices as were meet and necessary for a college, and *for his own lodgings*.

1 Quincy's Hist. Harv. Un., 452.
Early College Buildings by A. McF. Davis, p. 3.

The first college building was begun by Eaton, and was completed by Samuel Shepard, who took charge in 1639. It consisted of a cellar, a hall which was used as a dining-room and for recitations and religious exercises, a library, a kitchen, a buttery, a larder or pantry, and eight chambers for fellows or tutors and students, two of them small, and intended for a single occupant each, the others intended for three or four occupants each, and each containing three or four studies, besides five studies in the "turret."

Davis' Early College Buildings, 16 and 17.
Davis' College in Early Days.

The second college building was the president's house. This was erected by the college under the supervision of Henry Dunster, the first president of the college, who was appointed in 1640. The General Court early recognized the public character of the president's house by a grant in the following language (the money, however, was never paid): —

> The 13th of the 9th mo. A. 1644. It was ordered that Mr. Dunster, President of the College at Cambridge, shall have £150 assigned to him (to be gathered by the Treasurer for the College) out of the money due for the children sent out of England, to be expended for a house to be built for the said President, in part of the £400 promised unto him for his use, to belong to the College.

Quincy's Hist. Harv. Un., Vol. I., appendix No. VII., p. 473.

This house was occupied by the president and his family. In it were also the printing press and a student's room. Students' rooms were also provided in the Goffe house, which was purchased by the college, and the Indian College built for the "convenience of six hopeful Indian youths to be trained up there," but occupied generally by some twenty white students.

In College Book No. 1 we find the duties of the steward, the cook, the butler, and the servitors or waiters set forth

with the greatest minuteness; there is also mention of the brewer and the baker.

Col. Book No. 1, p. 23.

There are detailed regulations for the orderly conduct of students in their relations with the outside world and with the college, their behavior and supervision in their chambers, in the hall, and at meals.

Col. Book No. 1, pp. 17 and 23, 157.

It has always been the law that "the president shall constantly reside in Cambridge."

Col. Book No. 1, p. 157.
Report, p. 4.

President Dunster was the first occupant of the president's house, and when he was forced to resign in 1654, having fallen "into the briers of Antipaedobaptism," he had to address a pathetic appeal to the General Court to save himself and family from being at once ejected from the house.

Quincy's Hist. of Harv. Un., Vol. I., pp. 18 and 19.

In the year 1700, after Increase Mather had finally consented as president of the college to live in Cambridge, a committee of the General Court was appointed "to take care that a suitable place was provided at Cambridge for the reception and entertainment of the President, and to consider what ought to be done with respect to a house already built for a President's house."

Quincy's Hist. of Harv. Un., Vol. I., pp. 109 and 110.

The use of this house was understood to be part of the president's compensation, and President Leverett petitioned for compensation for the "demolition in part" of the house, and after his death his daughters and heirs petitioned for compensation because their father had been deprived of the use of the president's house after it was pulled down, about 1720, to make room for Massachusetts Hall.

On June 18, 1725, a committee of the General Court was appointed "to look out a suitable house for the reception of the president and know what the same may be had for," and on June 23, the same month, the same committee was "further empowered to hire such a house for the space of six months next coming, or until they make report to this Court in their fall session."

Resolves of 1725.

And on Jan. 1, 1726, the General Court passed the following resolve for the purpose of providing a home for President Wadsworth, which house has ever since been known as the Wadsworth House : —

> And whereas there is not at present any convenient house provided for the reception and entertainment of the president of the said college for ye future, and the Court being willing and desirous to repeat their intentions and inclinations in all things for ye prosperity of that society and that the same may flourish under the Divine Influence,
>
> It is resolved that the sum of one thousand pounds be allowed and paid out of the public treasury to the corporation of Harvard College and by them to be forthwith used and disposed of for the building & finishing a handsome wooden dwelling house, barn, out housing &c. on some part of ye land adjacent and belonging to the said college. Which is for the reception and accommodation of the Rev. the president of Harvard College for the time being.

A statute of the General Court of the Province which authorized a lottery for the purpose of raising the sum of £3000 for building a new hall for lodging-rooms for students, has the following preamble : —

> WHEREAS the buildings belonging to Harvard College are greatly insufficient for lodging the students of the said college, and will become much more so when Stoughton Hall shall be pulled down, as by its present ruinous state it appears it soon must be ; and whereas there is no fund for erecting such buildings, and considering the great expence which the general court has lately been at in building

> Hollis Hall, and also in rebuilding Harvard College, it cannot be expected that any further provision for the college should be made out of the public treasury, so that no other resort is left but to private benefactions, which it is conceived, will be best excited by means of a lottery, therefore, to prevent the further inconveniences which will arise from the necessary pulling down of Stoughton Hall and to provide for the present want of lodging rooms in the said college, . . .
>
> Province Laws 1765–66, chap. 21.

This method of helping the college to provide buildings for its students, which was begun under the authority of the Province of Massachusetts Bay, was resorted to also under the authority of the State Legislature.

> Laws and Resolves, 1795, chap. 1.
> Laws and Resolves, 1805, chap. 5.

In the early history of the college, the students and the professors, fellows, or tutors were obliged to live in the college unless specially excused. At a meeting of the Overseers, Anno 1660, it was ordered : —

> That no student shall live or board in the family or private house of any Inhabitant in Cambridge without leave from the President and his Tutor, and if any upon such leave obtained shall so live, yet they shall attend all College Exercises, religious and Scholasticall & be under Colledge Order & Discipline as others ought to do & be that are resident in the Colledge & shall pay allso five shillings a Quarter towards Colledge Detriment, beside their Tutorage.
>
> Col. Book No. 2, p. 23.

> Anno 1666. It is ordered by the Overseers that such as are fellows of the Colledge, & have sallaryes payd them out of the Treasury shall have their constant Residence in the Colledge, and shall lodge therein & be present with the Schollars at meal times in the Hall, have their studyes in the Colledge that so they may be better enabled to inspect the manners of the Schollars & prevent all unnecessary Dammage to the Society.

College Book No. 3, p. 25.
Quincy's Hist. of Harv. Un., Appen. No. 4, pp. 540, 549.

In the College Laws of 1734, chap. 5, par. 1, it is provided as follows: —

> All the Tutors, & Professors, Graduates & Undergraduates, who have studies in College, shall constantly be in commons, while actually residing at College, vacation time excepted: and shall Dine and Sup in the Hall, at ye stated meal times, except waiters (and such whose Parents or Guardians live so nigh that they may conveniently board with them) and such others as the President and Tutors shall in cases of necessity exempt, Provided always that no Professor or Tutor shall be exempted but by leave of the Corporation with the consent of the Overseers. And the Tables shall be covered with clean linen cloaths, of a suitable length and breadth twice a week, and furnished with Pewter Plates, the plates to be procured at ye charge of the College, and afterwards to be maintained at the charge of the Scholars, both Graduates and Undergraduates, in such manner as the Corporation shall Direct.

College Book No. 1, pp. 168, 169.

> Laws of 1790, Chap. VIII., par. 2: The professors shall constantly reside at Cambridge, near the College, and the Tutors and Librarian in the College. And the Corporation shall assign to the Tutors, and such Professors as reside in the College, their respective chambers.

The laws and practices of the University have been substantially the same to the present time, housing as many of its students as it can find chambers for, feeding them in one or more halls or dining-rooms, and requiring them to live as much as possible under the supervision of tutors and professors, who, as far as practicable, are required to live in college buildings, or so near the college that they can exert a guiding and restraining influence over the students.

Laws of 1798, Chap. VIII., par. 2, and subsequent years.

ARGUMENT

I

Exempting Statutes

From the foregoing historical references, it is very evident that from the beginning the Corporation and the Overseers of Harvard College have considered the College to be essentially a community of teachers and students, housed and fed in the college, living in college buildings, subject to the disciplinary rules of the College where the restraining and guiding influences of the president and teachers could be brought directly to bear upon the students. It is equally clear that in accordance with this idea, they considered it absolutely necessary for the accomplishment of the purposes for which the college was incorporated that it should have buildings suitable for housing and feeding its president and teachers and students.

The historical evidence is quite as strong that the General Courts of the Colony of Massachusetts Bay, of the Province of Massachusetts Bay, and of the Commonwealth of Massachusetts held the same view of the college, and of the means necessary for the accomplishment of its purposes, for we have seen that the Colony, the Province, and the Commonwealth at times when their resources were very limited, provided, or helped to provide, buildings to be used as the dwelling places or homes of the president, teachers, and students of the College.

It would certainly be a very strange and illogical policy for the Colony, the Province, or the Commonwealth to put a tax upon buildings which they considered so essential to the College that they strained their own resources to help build and maintain them, or to tax buildings which are used for the same purposes as those which they so helped to construct and maintain. But an examina-

tion of the laws by which Harvard College has been exempted from taxation will show that such an unreasonable and illogical policy was never put in force by either of the sovereign powers under which the College has existed.

Under its charter, which it received from the Colony, the College was authorized to hold real estate not exceeding the value of five hundred pounds per annum and any amount of personal property; its real estate, not exceeding the value of five hundred pounds per annum, and all its personal property was exempted from taxation; in other words, under its charter all its property was exempted.

Stat. of May 31, 1650.

This exemption granted by the Colony in the charter has ever since been respected by the Province and the Commonweath; it is in force to-day and applies to all the property which the College had when it received its charter.

Hardy *v.* Waltham, 7 Pick. 108
Harvard College *v.* Aldermen of Boston, 104 Mass. 470.

The Province, however, did more than observe the exemption of the charter of the College; it expressly exempted *all* its property, and in all the numerous acts passed by the General Court of the Province of Massachusetts Bay for apportioning and assessing taxes, we find provisions substantially in the same form, exempting from assessment both the property of the College, and with some qualifications, that of the President, Fellows, instructors, and students of the College.

In the last of these acts passed by the General Court of the Province, the language of the exemption is as follows: —

> Provided, nevertheless, that the following persons, viz., the president, fellows, professors, tutors, librarian, and students of Harvard College who have their usual residence

> there, . . . are not to be assessed for their polls or their estate, unless their real estate be not under their actual management and improvement; . . . and also all persons who have the management and improvement of the estate of Harvard College are not to be assessed for the same.
>
> Province Laws 1780, chap. 16, sec. 4.

The first act of the General Court of the Commonwealth, apportioning and assessing a tax, — Laws and Resolves of 1780, chap. 43, — contains exactly the same provision as that above copied from the Province Laws of the same year. And this identical clause of exemption is found in all the subsequent acts down to 1784 (L. & R. 1781, chap. 28; 1782, chap. 65; 1784, chap. 23; 1784, chap. 25).

The first clause of these provisions which exempted the president, fellows, tutors, librarian, and students of Harvard, and later of Williams and Amherst, and of all theological, medical, and literary institutions and preceptors of academies, was repeated in the various tax statutes, with slight modifications, until 1829, when it was repealed (Acts of 1828, chap. 143, passed March 4, 1829), and we need not further consider it.

In chap. 23 of the Laws and Resolves of 1784, an Act for ascertaining the ratable property of the Commonwealth, the clause exempting the college property is as follows: —

> Provided also that all the estate of Harvard College and lands belonging to the Indians are excluded from this Act.

In the Act of 1785 apportioning and assessing a tax, the exempting clause is as follows:

> And also all persons who have the management or improvement of the estate of Harvard College are not to be assessed for the same.

And the provision was repeated in substantially the same form in every subsequent Act down to 1801, the

exemption being extended to the property of Williams College in 1794 and of Bowdoin in 1795 (1787, chap. 56; 1788, chap. 67A; 1789, chap. 49; 1790, chap. 25A; 1793, chap. 9A; 1794, chap. 9; 1795, chap. 11; 1796, chap. 6 and 51; 1798, chap. 75; 1799, chap. 49; 1800, chap. 77; 1801, chap. 82).

In the Acts passed in 1801, 1811, and 1821, for ascertaining the ratable estates in the Commonwealth (1800, chap. 66; 1810, chap. 79, and 1820, chap. 64) the property of the colleges and academies is excluded from the ratable estates in the following words: —

> And also all the estates belonging to the said Harvard and Williams Colleges and to said academies.

And in the Acts for apportioning and assessing taxes in 1802 and subsequent thereto is the provision: —

> And also all persons who have the management of the estates of Harvard College, Williams College, and Bowdoin College, and academies aforesaid in this Commonwealth, are not to be assessed for the same.

This was repeated in each annual Tax Act down to and including 1807.

The Tax Act of 1808 (March 12, 1808) contains the following provision: —

> And that all persons who have the management of the estates of Harvard, Williams, and Bowdoin Colleges, and of the academies aforesaid respectively, shall not be assessed for the same. . . . Provided, however, that nothing in this Act contained shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the Corporation of Harvard College without the college bounds, in their town tax, excepting such estates as are improved by the president of said college, Professor of Theory and Practice of Physics, Professor of Theology, Professor of Mathematics, and Tutor of Logic, Metaphysics, and Ethics.

This language was repeated in each annual Tax Act to

and including 1817. It is clear that the property of the college exempted from the town tax by these Acts of 1808–1817 cannot be other than the separate residences of the officers named. If the property described as the houses and land belonging to the college without the college bounds, and improved by the president of the college, the Professor of Physics, the Professor of Theology, the Professor of Mathematics, and the Tutor of Logic, Metaphysics, and Ethics, does not mean the residences of these professors, allotted to them by the college, it is hard to imagine what these words do describe, for the recitation rooms used by the president and the other instructors named were not at that time without the college bounds, and if they were, they could not be said to be *improved* by these professors.

In 1818 the language of the exemption was the same as that of 1808, except the proviso, which was as follows:

> Provided, however, that nothing contained in this Act shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the corporation of Harvard College without the college bounds in their town tax, excepting such estates as are occupied by the president of said college, or by any of the professors, tutors, or instructors thereto belonging, or by students, or resident graduates, or shall be unoccupied.

This clearly could operate as an extension of the exemption.

The exempting clause in the Act of 1819 was the same as that of 1818, except that this clause is inserted before the proviso : —

> Nor shall the Massachusetts General Hospital be assessed for any real or personal estate belonging to the same.

The Tax Acts of 1820 and 1821 contained the same exempting clause as in 1819, except that " Bowdoin College " is omitted from the Act of 1821, being then in Maine.

The Act of 1822 was similar to that of 1821, with the following added at the end of the proviso: —

> Or to prevent the town of Andover from taxing such real estate belonging to the corporation of Phillips Academy situated in said town as shall not be under the immediate occupation and improvement of said corporation, or of any person or persons connected with said corporation exempted from taxation by this Act. And provided also, that whenever the real and personal estate of any one of the persons before enumerated as exempted from taxation shall exceed the sum of eight thousand dollars, the excess of such person's estate shall be taxed as in other cases notwithstanding before provided by this Act.

The exempting provision in 1823 and 1824 was the same as in 1822, except that in 1824 the phrase "Berkshire Medical Institution or the Boston Atheneum" is inserted after Massachusetts General Hospital.

We find no State Tax Act between 1824 and 1829.

In 1829 the exempting clause was as follows: —

> Sec. 6. Be it further enacted, that all persons who have the management of the estates of Harvard, Williams, and Amherst Colleges and of the Academies established by law respectively, shall not be assessed for the same, and that Indians shall not be assessed for their polls and estates, nor shall the Massachusetts General Hospital, Berkshire Medical Institution, or the Boston Athenæum be assessed for any real or personal estate belonging to them respectively. . . . Provided, however, that nothing contained in this act shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the corporation of Harvard College without the College bounds in their town tax excepting such estates as are occupied by the president of said College, or by any of the professors, Tutors, or Instructors thereto belonging, or by students or resident graduates, or shall be unoccupied, or to prevent the town of Andover from taxing such real estate belonging to the corporation of Phillips Academy situated in said town as shall not be under the immediate occupation and improvement of said corporation.

This language is also found in the Acts of 1830 and 1831.

There was no State Tax Act between 1831 and 1834. The act passed in 1830 for ascertaining the ratable estates for the following ten years, excepted

> All the estates belonging to Harvard, Williams and Amherst Colleges and to incorporated Theological Institutions and Academies and also the estate belonging to the Massachusetts General Hospital and improved for the purposes of that Institution. (Acts of 1830, chap. 130.)

This is the complete legislative history of the exemption from taxation of the property of Harvard College down to 1835. We have included therein the statute exemptions of the other colleges, academies, and educational institutions of the Commonwealth, for the reason that in 1835 the legislation exempting the property of each one of these institutions separately and with particularity was revised and condensed by the employment of general terms into one general provision affecting all of them. This review of the various statutes shows that neither the Colony, the Province, nor the Commonwealth, up to 1835, ever taxed the houses or lands of the College that were occupied by its president, professors, tutors, instructors, students, or resident graduates.

The Commissioners appointed in 1832 "to revise, collate and arrange, as well the Colonial and Provincial Statutes as all other the General Statutes of the Commonweath which are or may be in force at the time when such Commissions may finally report," reported on the subject in question, in December, 1834, as follows: —

> The following property and polls shall be exempted from taxation, namely,
>
> *Second.* The property of the Massachusetts General Hospital, the Boston Atheneum, and the Berkshire Medical Institution.
>
> *Third.* The property of Harvard College; provided, how-

ever, that the inhabitants of the town of Cambridge may, for town purposes, tax such real estate in that town belonging to the Corporation of Harvard College as is not within the college bounds and is not occupied by the president, or any professor, instructor, tutor, student, or resident graduate, and also such as shall be unoccupied.

Fourth. The property of Phillips Academy in Andover; provided, however, that the Inhabitants of the town of Andover may, for town purposes, tax such real estate in that town belonging to the Corporation of Phillips Academy, as is not under the immediate occupation or improvement of said corporation, or of any person who is connected with said corporation, and is exempted in this chapter from taxation.

Fifth. The property of Williams College and Amherst College.

Sixth. The property of every academy incorporated under the authority of this Commonwealth.

The Commissioners were instructed in the resolve authorizing their appointment "to execute and complete said revision in such manner as in their opinion will render the said General Laws most concise, plain, and intelligible." There was in the clauses of sect. 5 of chap. 7 of their report, however, little or no attempt at conciseness. The Legislature was evidently of opinion that it could improve the language in this regard, while at the same time equalizing the privilege granted to the various institutions named. And in the Revised Statutes, chap. 7, sect. 5, these five clauses were condensed into the following form: —

Secondly. The personal property of all literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, and such real estate belonging to such institutions as shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated.

In the subsequent revisions of the statutes in 1860 and 1881, and in the amending Act of 1889, substantially

the same language is employed with certain additions that are immaterial in the consideration of this case, and as there is no contention that the Legislatures of 1860, 1881, and 1889, while using the language of the Revised Statutes, intended to change the meaning thereof, the question for us to consider is what changes the Legislature of 1835 intended to make, or what meaning they intended to give to the general, condensed language of the exempting provision above quoted.

If we compare the language of the Revised Statutes with that of the Commissioners' Report, or with the State Tax Act of 1831, of which the Commissioners' Report is a restatement, it becomes evident that the Legislature of 1835 intended —

First. To give all the institutions named in the Statute of 1831, and to all other literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, the same right to exemption from taxation.

Second. To give to the State and to the Towns of Cambridge and Andover an equal right to impose taxes on the institutions within those towns.

Third. That the mere fact that the property of the College was "within the college bounds" (if that phrase means anything more than "actually occupied by" the College), or that it was unoccupied, should no longer be sufficient grounds for exempting it from taxation. We think that it is more than probable that property which under the Act of 1831 would be designated as inside the College bounds is included in that which under the Revised Act would be designated as actually occupied by the College.

Fourth. This Court has declared in Williams College *v.* Williamstown, 967 Mass. 508, that the president, professors, and instructors of a college are officers thereof; therefore, by the phrase "officers of the said institution"

in the Revised Act, the Legislature must be held to include "the president, or any of the professors, tutors, or instructors" of the Act of 1831. It probably also includes other officers than those enumerated in the Act of 1831.

Fifth. In omitting the phrase, property occupied by the "students or resident graduates," the Legislature of 1835 very likely intended no alteration in the sense thereby, for the reason that they considered that a building of which the college kept the control, which was under the supervision of college officers (resident proctors), in which students' rooms were cleaned and kept in order by college servants (goodies); where all repairs and alterations were made by the college; where the students had no right to the hallways, except to pass through them, or to the rooms except to use them as mere licensees during the college term as dwelling places and studies, was actually occupied by the college, so that we may conclude that the phrase "actually occupied by them," of the Revised Act, includes the same property which under the Act of 1831 would be designated as "within the college bounds," and occupied by the "students or resident graduates."

Sixth. Under the Act of 1831 the purpose of the occupancy was assumed to be educational or charitable in gaining the exemption for the property occupied by the officers designated. Under the Revised Act this assumption is expressed and the occupancy must still be for the purpose for which the institution was incorporated in order to give it the right of exemption.

We believe we have here indicated all the changes that the Legislature of 1835 intended to make in this law of exemption, as it then existed, namely, making it apply to all the institutions designated equally, making the right of State tax and town tax coextensive, increasing the class of officers whose occupancy may gain the right

of exemption, and therefore requiring in terms that the occupancy be for the purpose for which the institution was incorporated. Only the latter of these changes is material to this case, — the purpose of the occupancy.

II

"Occupied by the Officers"

As a majority of this Court have apparently based their decision in a recent case upon the quality or kind of occupancy, it becomes important to consider the meaning of this word "occupied" which is used in the statutes both before and since the revision of 1835. When a term of one statute is used in a later statute upon the same subject matter, we have a right to infer that it is used in the same sense in each (Commonwealth *v.* Hartnett, 3 Gray, 450). In the Statute of 1831 we have the words "occupied" and "unoccupied" applied to property "belonging to the corporation." It is evident from this that "occupied" is not used in the constructive sense in which property that has no other occupant is said to be occupied by the owner after he has once taken possession, although the property may at the time be actually "unoccupied." What was necessary under the Statute of 1831 was the *actual* occupancy by one of the officers named. There can be no doubt that under this Statute of 1831 occupancy by a professor under a written or oral lease of property belonging to the college would exempt the college from taxation for the property so leased, for such property would belong to the college and be occupied by its professor, which is literally what the statute required.

As proof of what we have just said, that the Statute of 1831 required actual occupancy, we observe that the word "actually" is used in the Revised Act, the language

being "such real estate belonging to such institutions as shall actually be occupied by them, or by the officers of said institutions for the purposes for which they were incorporated." It is true that in the subsequent revisions of this Act, the word "actually" was omitted, but this was "without any apparent intention of changing the meaning," as has been said by this Court. This Court has also defined in the same case what the words "shall actually be occupied by them" (the institution) means in the following manner: —

> The word "occupied" in the statute is not used in the general sense in which a corporation or individual may be said to occupy their real estate when it is not occupied by any one else, but in the sense in which an incorporated college, academy, hospital, or like institution, occupies its college, academy, or hospital, and the lands and buildings connected therewith. That this was the intention of the Legislature is shown by the Statute of 1878, chap. 214, passed probably in consequence of the decision of Trinity Church *v.* Boston, 118 Mass. 164, which provides that "the real estate belonging to such institutions as are mentioned in the third division of section five of chapter eleven of the General Statutes, purchased with a view of removal thereto, shall not be exempt from taxation for a longer period than two years until such removal takes place."

Lynn Workingmen's Aid Association *v.* Lynn, 136 Mass. at 285.

It is clear that an incorporated institution can "occupy a college, academy, or hospital, or lands or buildings connected therewith" only by its officers or agents; therefore the phrase "actually occupied by them" covers every occupation on behalf of such an institution by its officers or agents.

There is a well-known rule of construction "that every clause and word of a statute shall be presumed to have been intended to have some force and effect" (Opinion of the Justices, 22 Pick. 571, at 573); therefore we must

hold that this latter clause, "actually occupied by their officers," means something different from "actually occupied by them" (the institution); it means the occupancy by officers where the officers themselves are in occupation, and not the institution through its officers or agents. This will become more apparent if we remember that "actually occupied by their officers" is a revision of the clause in the Statute of 1831, "occupied by the president," etc.

As we have contended above, the occupancy by "the president, professors, tutors, and instructors" required by the Statute of 1831, and the occupancy by "officers" required by the Revised Statutes of 1835 and the subsequent enactments, is the same kind of occupancy, actual occupancy by the party designated, without qualification as to the degree or completeness of the occupant's control, unqualified as to the right or title under which the occupancy is maintained, and qualified in the Statute of 1835 and its subsequent revisions only in the purpose for which it is maintained; therefore, if we are right in our understanding that the decision of the majority of this Court in the case of Williams College *v.* Williamstown was based on the fact that the officers in that case were held to be tenants at will of the college and had an estate in the property, and were in sole occupation thereof, we are unable to follow the reasoning of that decision; for we fail to see anything in the Statute of 1831 or in the revisions of 1835, 1860, 1882, and 1889 which makes those facts decisive in determining the question of exemption; for, granted that the officers are tenants at will and in sole occupation of the property, it is still property "belonging to said institution" and is "actually occupied by the officers of said institution," which, so far as it goes, satisfies literally the words of the various statutes.

The fact that the premises are so leased to the occupant as to give him an estate therein may be an impor-

tant consideration in determining whether the premises are used for the purposes for which the institution was incorporated, and would be decisive of that question in connection with such other facts as that a full rent was received, that exclusive control was given for a definite period, not depending on length of service to the college, that the location of the building was such that the college could gain no peculiar advantage from his occupation, or any other circumstances showing that the real purpose of the institution was to acquire profit from the use of the premises. But no one of these facts is by itself decisive of the question of the institution's purpose, which must be determined from all the circumstances surrounding the occupancy.

III

How Occupied in this Case

If, however, we assume that the law is now settled by the Williams College case, so that we must read into the Statute of 1835 the proviso, "Provided it is not so occupied exclusively by said officers as lessees under a written or oral lease," we shall see that the several houses and lots in this case come well within such proviso; because no one of the occupants can be said to be a lessee of the premises in which he lives, or to have any exclusive estate in said premises, but they all occupy their respective premises as licensees merely, and in part, at least, in common with the college and with other college officers.

The president "has no lease of" 17 Quincy Street and the 32,000 feet of land under and adjoining the same. This land is part of the college yard and is therefore in the possession and occupation of the college, and cared for and kept in order by the college superintendent.

Assigning 32,000 feet of the college yard as appurtenant to this house was a mere arbitrary proceeding on the part of the assessors, and they might just as well have made it 60,000 or any other number of feet, and the president has no more possession of this 32,000 feet than he has of the rest of the college yard, or than any other officer or student of the college has. The house was built from a gift left to the college "in aid of the erection of a dwelling-house for the president of the university and his successors," and he and his family occupy the house "if he so chooses, so long as he performs the duties of the office of president." He "pays no rent or compensation for the use and occupation of this house." Part of the house is used for the meetings of other college officers on college business and for the transaction of other college affairs. The house is repaired inside and out, and the furnace repaired and cleaned by college officers, and at the college expense. (Report, pp. 4, 5.)

We submit that these facts show that the premises are not in the exclusive control of the president; that they are occupied in part by the college and its officers; that the president occupies so much of them as he occupies, not as lessee but as licensee; that there is no relation of landlord and tenant, but mere permission to occupy on one side, and on the other, no obligation either to occupy or to pay rent. It is exactly the kind of occupation that is described in the case of Pierce *v.* Inhabitants of Cambridge, 2 Cush. at 613, as exempting college property from taxation: —

> It would be otherwise if the building had been built for one of the professors or officers of the college and had been occupied by the plaintiff with the permission of the college and without having any estate therein or paying any rent therefor.

Of No. 17 Kirkland Street, the grounds are cared for and superintended by the college. The lower story of

the house is assigned by the college as a refectory for the Foxcroft Club, an association of students organized for the purpose of obtaining wholesome food at cost. "The Club has had no lease nor fixed term of use" and pays no rent. The upper part of the building is used as a college dormitory in charge of a resident proctor; the whole of this part is repaired, the rooms kept clean, beds made up, etc., by college servants (Report p. 6). It is evident that the students are not lessees. Their relation is more that of lodgers (White *v.* Maynard, 111 Mass. 250), every college being, as we have seen above, essentially a boarding-school. In Province Laws 1765–66, chap. 19, as we have seen above, the students' rooms are called "lodging-rooms." This house and lot are clearly occupied by the college through its officers and agents. The other parties are there as licensees.

The houses No. 11 Quincy Street, 25 Quincy Street, and 37 Quincy Street are, like the president's house, all in the college yard; therefore the land about them which has been taxed is all in the occupation of the college. The houses are cared for in the same manner as the president's house. The salary of each occupant "is fixed at a certain sum and the use of house." He pays no rent. Nos. 11 and 25 are used in part for regular college exercises and other different college purposes incident to the office of the occupant (Report pp. 7–9). It is evident that neither of these three professors has any lease of the premises occupied by him, and that neither of them is in exclusive control of the houses and lots, but each in so far as he occupies, does so as professor or as professor and dean; in other words, each occupies as an officer of the college and either represents the college or is a licensee.

The occupancy of the other three houses, 16 Quincy Street, 38 Quincy Street, and 11 Frisbie Place, is essentially the same; it differs only in the fact that the houses

are not built in the college yard, but the walks, grass, and turf are cared for in just the same way. Each house is used in part by other college officers for college business, and for various college purposes incident to the official duties of the professor who occupies as professor, or as professor and dean, as the case may be, that is to say, he occupies it in his official capacity (Report, pp. 8, 10, 11). As we have said in regard to the others, neither pays rent or is a lessee, nor has he exclusive control of the premises assigned to him.

As the occupants in this case cannot be said to be lessees in exclusive control of these premises, the question remains, Are the several premises occupied for the purposes for which the college was incorporated? And this, as we have above contended, is the sole test.

IV

The Purpose of the Occupancy

When premises belonging to one party are occupied by another by permission or agreement of the owner, as purpose is an act of the mind, and there are two minds involved, there may strictly be two purposes in the occupancy, the purpose of the owner, and the purpose of the occupier, and one may differ widely from the other. The purpose of a landlord may be to get profit, or to use his property for public ends, that of the tenant to get a home, or a place to manufacture goods; the chief end or purpose of one is but the means towards the chief end or purpose of the other. In this case it is the *college's* property that is to be taxed or exempted, and it is the dealings of the college with its property, the use it makes of it, that is to decide the question of its exemption. "The plaintiff's purpose in the use of its farm must be ascertained from its conduct — its acts and the declarations

accompanying them" (Mount Hermon Boys' School *v.* Gill, 145 Mass. at 148). In other words, it is the purpose of the college, in the use to which it puts its property, and not the purpose of the occupant (except in so far as his purpose coincides with that of the college) that we are to scrutinize in deciding this question. So this Court, on inquiring into the purpose for which lodging-houses, let by a charitable institution were occupied, decided that it was for the purpose of profit or investment. (Chapel of Good Shepherd *v.* Boston, 120 Mass. 212.)

The purposes for which Harvard College was incorporated are set forth in its charter in the following language: —

> Whereas, through the good hand of God, many well-devoted persons have been, and daily are, moved and stirred to give and bestow sundry gifts, legacies, lands, and revenues, for the advancement of all good literature, arts, and sciences, in Harvard College, in Cambridge, in the County of Middlesex, and to the maintenance of the President and Fellows, and for all accommodations of buildings, and all other necessary provisions that may conduce to the education of the English and Indian youth of this country in knowledge and godliness, —
>
> It is therefore ordered and enacted by this Court and the authority thereof, that for the furthering of so good a work, and for the purposes aforesaid, from henceforth that the said College in Cambridge, in Middlesex, in New England, shall be a Corporation, consisting of seven persons, to wit, etc.

Thus the main purpose is "the advancement of all good literature, arts, and sciences in Harvard College" and "the education of the . . . youth of this country in knowledge and godliness." But this great purpose requires for its accomplishment various instrumentalities, various intermediate steps or means, and the acquirement and use of each one of these instrumentalities, the accom-

plishment of each one of these intermediate steps, becomes part of the main purpose which it is designed to assist in effecting. This would be true even if the college charter were silent as to the manner or means of effecting the main purpose; for the ultimate purpose characterizes each intermediate step, and thus the necessary means become part of the purpose.

This is exactly what the college charter declares, for among the "aforesaid purposes" it enumerates "the maintenance of the President and Fellows, and for all *accommodations of buildings* and *all other necessary provisions*." After this general declaration of the purposes for which the college is incorporated, it particularizes some of the "necessary provisions," of which the following deserve particular attention:—

> And the President and Fellows, or the major part of them, from time to time, may meet and choose such officers and servants for the College, and make such allowance to them, and them also to remove, and after death or removal, to choose such others, and to make from time to time such orders and by-laws for the better ordering and carrying on the work of the College, as *they shall think fit*. . . .
>
> And for the better ordering of the government of said College and Corporation: Be it enacted, etc. . . . And that all the aforesaid transactions shall tend to and for the use and behoof of the President, Fellows, scholars, and officers of the said College, and for *all accommodations of buildings*, books, and all *other necessary provisions* and furnitures as may be for the advancement and education of youth in all manner of good literature, arts, and sciences.

For two centuries and a half this charter of 1650 has remained to this day "the venerable source of all collegiate authority." And notwithstanding the great alterations in the mode of life of the community, the great enlargement of the range, and improvements in the methods, of education, the enormous increase in the number of students and instructors, and the changes which

two hundred and fifty years have wrought in the social life of the college, it has proved to be a sufficient source, mainly because of the wise elasticity given to it by its framers in making its corporate purposes include *all necessary provisions* and making its president and fellows the sole judge of what is necessary "for the better ordering and carrying on the work of the college;" and never yet has this Court sought to narrow the charter purposes of the incorporation, or to limit the charter authority of its government in deciding what are "necessary provisions" for accomplishing those purposes.

On the contrary, in the case of the Massachusetts General Hospital *v.* Somerville, 101 Mass. 319, this Court in the case of an institution whose charter is less explicit in granting a like discretion to the governing board, recognized and declared the doctrine for which we are here contending, in the following language: —

> WELLS, J. The plaintiff is a benevolent institution, incorporated within this Commonwealth. By Gen. Sts. c. 11, par. 5, cl. 3, "the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated," is exempted from taxation.
>
> The statute contains no limitation of the amount of real estate that may be thus held exempt from taxation; and we know of no authority under which, or rule by which, the Court can affix any such limitation. The only condition upon which the exemption depends is the proviso as to the purposes for which the real estate is occupied.
>
> In construing and applying this proviso, the Court cannot restrict it to the limit of necessity. The statute does not indicate such an intention on the part of the Legislature; and we do not think that any considerations of public policy require us to confine the exemption to narrower limits than the terms of the statute fairly imply. What lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers. The statute leaves it to be so determined, by omitting to provide any other mode.

> In the absence of anything to show abuse, or otherwise to impeach their determination, it is sufficient that the lands are intended for, and in fact appropriated to, those purposes. . . . The presumption is in favor of their judgment, and it requires more than mere difference of opinion upon a matter of opinion especially confided to them to overcome that presumption.

We submit furthermore, that every piece of real property which is put to a legitimate use by the college, or to a use authorized by its charter and statutes, must be used for the purposes for which the college was incorporated or for the purpose of getting an income from it; and every piece of real estate owned by the college must be held either for the purposes for which it was incorporated, or for the purpose of investment, or it may be held temporarily unused or unoccupied, awaiting its later appropriation to one or the other of these purposes. The college has a right to invest its funds in real estate to an unlimited extent for the purpose of producing an income with which to carry on the work of the college, or to carry out the purposes for which it was incorporated; but it has no right, for instance, to run a hospital exclusively for the general public. It has a right, however, to run a hospital for its students, if its governing body decide that to be necessary for their well-being. It has no right to maintain a gymnasium, a playground, a boat-house, a church, an art museum, or assembly halls for the exclusive use of the public, but all of these institutions in Cambridge for the use of the students and officers of the college are clearly authorized, though the college derives no income from them, because although some of them probably never entered into the minds of the founders of the college, they are considered necessary in every well-regulated college, because of the great changes that time has wrought in the scope and methods of an educational institution; and therefore they come well within the "necessary

provisions" of the college charter. We take it to be clear, then, that every piece of real estate of the college that is legally put to any use, is used either for investment or for the purposes for which the college was incorporated. And to determine whether a piece of property is exempt from taxation, the inquiry is, for which of these purposes is it used, the purpose of investment, or for college purposes? If for investment, this Court has held it is taxable; if for college purposes, it is not taxable.

Before the Williams College case this was the test and the form of inquiry employed and announced by this Court. Thus in Wesleyan Academy *v.* Wilbraham, 99 Mass. 599, the question being whether a farm used by an educational institution solely to raise produce for a boarding-house kept by the institution, to supply board to the students at its actual cost, was taxable, Chapman, J., says: —

> It does not appear that any profit is made by the plaintiffs out of what is furnished to the boarders; but an account is kept, and the cost of the production is reckoned, and enters into the price of board. The object of the plaintiffs is to furnish the students with cheap board; and this is one method of cheapening it, the whole benefit of the arrangement being allowed to them. So far as these students are concerned, it is a boarding-school, and in respect to board, as well as school-rooms, apparatus, and tuition, the ultimate purpose is to furnish cheap education.
>
> If the boarding-house and farm had been rented to a boarding-house keeper, the case would have been like that above cited. It would be the same if the plaintiffs carried on their farm and sold the produce at its market price for the use of the students, in order to make a profit as farmers or as dealers in milk and vegetables. But as it is managed, the object not being to make a profit to the funds of the institution, but to benefit the students, it is as really used for the purpose for which the institution was incorporated as the buildings and school apparatus.

So in Massachusetts General Hospital *v.* Somerville the

Court gives the following reason for holding that property would be exempt, although rent was paid by the occupant and received by the institution, saying that the exemption would attach : —

> If . . . the rent was paid and received in the manner stated as a convenient mode of adjusting the compensation of the person so employed, and not as the income or fruit of an estate granted. . . . By the ruling of the Court below, as we understand it, the question was made to turn upon the single fact of the payment and receipt of rent. This we think was erroneous.

So the bare fact that rent was paid and received does not prove that the property is used for investment, nor is it inconsistent with the fact that it is used for the purposes for which the institution was incorporated.

In the case of Chapel of the Good Shepherd *v.* Boston, as we have seen above, the lodging-houses were held not to be exempt because the statute "did not make the purpose of investment and profit, for which these rooms were improved and used, a charitable or religious purpose in any legal respect."

In Mount Hermon Boys' School *v.* Gill, 145 Mass. 139, where it was the question whether the statute exempted from taxation a farm and buildings thereon, consisting of two farm-houses, a wood-house, two barns, two sheds, two tobacco-barns, and a milk-house, belonging to a school incorporated under Public Statutes, chap. 115, for the "education of boys," and worked mainly by the scholars, the produce being used to board the scholars and the surplus sold at market rates, the same test was applied, namely : is the property used for investment or not ?

> Knowlton, J. Was this farm practically used to teach the boys agriculture, and give them physical training, and furnish them manual labor as a part of their education ? Was it used to furnish supplies directly to this boarding-school, and so lessen the cost of education there ? Or was

> it, on the other hand, used to produce revenue, and earn income which might afterward be expended for the school? It seems to us that the farm and the property upon it were used in the legitimate management of the school, directly to accomplish its purposes, and not to obtain money for subsequent use in accomplishing them. The fact that products were sold is a circumstance important only so far as it characterizes the use. We think that the sales were merely incidental to a use for the purposes of the institution.

From this we see that it is not inconsistent with the right to exemption that some income or pecuniary profit is incidentally derived from the use of the property, if the main or immediate purpose of the institution is to use it for the purpose for which it was incorporated.

In the case of Salem Lyceum *v.* Salem, 154 Mass. 15, where the Court held the main purpose to be to get a profit, this principle was declared in the following language: —

> W. Allen, J. The exemption from taxation does not extend to estate owned by the plaintiff, and allowed by it to be occupied by others, with the purpose of deriving income to expend in diffusing knowledge and promoting intellectual improvement in Salem. Those are the purposes for which the estate must be occupied by the plaintiff itself to exempt it from taxation. If the principal occupation is by the plaintiff for those purposes, occasional and incidental use for other purposes might not render it liable to taxation; but when the substantial use and occupation is for the purpose of deriving income from it, it makes no difference if that income is used to provide a course of lectures once a year in the hall.

The decisions of the Court in the two cases of New England Hospital *v.* Boston, 113 Mass. 518, and Trinity Church, 118 Mass. 164, are also in accordance with this rule, though the rule is not stated in the opinions. In the latter case a few piles had been driven into the ground preparatory to erecting a house of religious wor-

ship ; in the former, an architect had been employed to draw plans for a hospital, and had viewed the ground preparatory to building ; in both cases, the Court held that the lands were occupied for the purposes for which the institutions were incorporated.

The next case in which this question arose is that of Williams College *v.* Williamstown, 167 Mass. 505, and here it seems to us we have an entire departure from the rule laid down in all prior cases by this Court for ascertaining whether or not the property in question is occupied for the purpose for which the institution was founded. We doubt whether it is so much the decision in that case as it is the reasons given in the opinion of the majority of the Court that has caused the assessors of almost every town in the Commonwealth which contains a literary, benevolent, charitable, or scientific institution, to change the settled policy of years by assessing for the first time in their history every piece of real estate belonging to those institutions, that is not used as a direct instrument or as an indispensable requisite for educating the young, or curing the sick, or bestowing charity upon the poor. And we have great doubt whether this Court ever intended that the decision in that case should serve as a ground for changing the settled policy of the Commonwealth and of the cities and towns for over sixty years. But if we bear in mind that heretofore the test applied by the Court was whether or not the property was used as an investment and that the mere payment and receipt of rent for the property, or the receipt of some pecuniary profit therefrom, was not necessarily decisive of that question, we must admit that there was an entirely different rule announced in the following language of the Court in the Williams College case : —

> The most important contention of the respondents is that these occupants were tenants at will of the estates respectively, and that the occupation was for the purpose of a

> residence, and not for the purposes for which the college was incorporated. A majority of the Court are of opinion that this is the true view to take of the facts found by the commissioner, and of the evidence. . . .
>
> In the present case the occupants were each in the sole occupation of the premises, and the occupation was for strictly private purposes, and the control of the premises during the occupation was with them. That the rent was paid by a deduction made by the college monthly from the salary, instead of being paid directly to the college is immaterial.

It may be that the Court was of opinion that Williams College had let these houses to its officials mainly for the rent it was getting for them, as an investment of its surplus funds, but it has not so stated and we doubt whether the facts would justify such an inference. We think it would be in accordance with the decision, and reasoning, in Massachusetts General Hospital *v.* Somerville to hold that these houses were not occupied for the purpose of investment.

In holding that the occupation was for the purpose of a residence "a strictly private purpose" and therefore not for the purpose for which the college was incorporated, we contend that the Court has in the first place ignored an incontestable fact of which it ought to take judicial notice, because it is part of the definition of the word "college," and is also a part of the history of this country and of England; namely, that the providing of residences for its instructors and students is within the scope of the purposes of the college. It has been the practice of every one of the great colleges from the time of their foundation, as we have attempted to show above; and there are few, if any, colleges in this country or any other country, where it is not the practice at the present time, which of itself goes to show that it has proved a wise and salutary practice, if not one absolutely necessary for the proper discipline and supervision of the students.

In the second place, it has ignored the rule of construction announced in the case of Massachusetts General Hospital *v.* Somerville which recognized the right of the governing body of the institution to decide what uses of its property will promote the purposes for which the institution was incorporated.

> In construing and applying this proviso, the Court cannot restrict it to the limit of necessity. . . . What lands are reasonably required and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers.

See Peirce *v.* Boston & Lowell R. R. Co., 141 Mass. 481.

In the third place, in saying that the buildings were occupied for the purpose of residences, it is evident that the Court has in mind the purpose of the occupants and not of the college, and they have therefore departed from the rule founded on sound reason and the declaration of this Court, as we have already seen, that it is the institution's conduct in regard to its own property, its own acts, and the declarations accompanying them showing its purpose that render its property taxable or untaxable. The purpose of the occupant may be to acquire a residence, but we submit that his purpose cannot determine the taxability of the institution's property. The real question is, What is the purpose in the mind of the governing body of the institution in having the property occupied in that particular way; namely, what is the purpose of its occupation as a residence by that particular officer? If it is put by the college to a legitimate use, or one authorized by its charter, that use must be either for the purpose of investment or for the purpose for which it was incorporated as we have seen above; it must be for the rent it gets from it, or for the more efficient service it will get from its officer by putting him in such close relation to the institution and students that he will be the better able to perform the services which he has to

render to the college, or for some other advantage to its educational ends which it may get from this form of occupation.

To say that property is occupied for the purpose of a residence is to describe the kind of occupancy rather than the purpose of it. If we should apply the reasoning of the Williams College case to the other cases decided by this Court, we should have to say in Wesleyan Academy *v.* Wilbraham, that the property was occupied for the purpose of a farm; in Massachusetts General Hospital *v.* Somerville, that the land was occupied for the purpose of keeping it vacant, and the house for the purpose of a residence; in New England Hospital *v.* Boston, and Trinity Church *v.* Boston, that the property was used for the purpose of building upon it at some future time; in Mt. Hermon Boys' School *v.* Gill, that the land was used for the purpose of a farm and the houses for the purpose of residences, for storing wood, tobacco, and other farm products and for a dairy, all strictly private purposes; and as none of these purposes come within the purposes for which any of these institutions were incorporated, that the several properties were taxable. But the Court held that the properties were exempt because the questions which they asked and answered were: For what purpose is this land used by the institution as a farm, that land held vacant, and these others occupied for building? For what purpose is this building used by the corporation as a residence, that used as a barn or shed, and this other for a dairy? So, therefore, we repeat, that the question to be answered in the Williams College case was, for what purpose were these houses used by the college as residences?

This case, however, is clearly distinguishable from the case of Williams College in several important particulars, some of which we have already pointed out. So that even if we accept the reasoning and the decision of the

Williams College case, we can still claim with confidence that the several houses and lots in this case are exempt under the statute.

As to the house and lot No. 17 Kirkland Street, occupied as a students' dormitory and a dining-room, no such occupation was in question in the Williams College case, but the Court there admits that "if a professor lived in rooms in the dormitory of a college which remained under the general control of the college, and a deduction of a certain sum of money on account of such occupation was made from his salary," the property would be exempt. We have already shown that this building and lot are under the general control of the college, and that none of the occupants can be described as tenants or lessees of these premises. We have seen that the first building of Harvard College, finished in 1639, contained a dormitory or rooms for students and instructors, and a dining-room, and that dining-rooms and dormitories have ever since been maintained by the college, and so far as we know there never was a college without them. This is the first attempt ever made in this Commonwealth to tax college dormitories or dining-rooms. Under a substantially similar statute in Connecticut, an attempt was made at New Haven to tax both. The Supreme Court of Connecticut in a very learned opinion has held that dormitories and dining-halls are exempt.

Yale University *v.* Town of New Haven, 71 Conn. 316.

In view of the intimation above quoted from the Williams College case, as to college dormitories, and the fact that this Court has already held that a farm worked by an educational institution for the purpose of furnishing products to be consumed in the students' dining-room is exempt (Wesleyan Academy *v.* Wilbraham, 99 Mass. 599; Mount Hermon Boys' School *v.* Gill, 145 Mass. 139), we deem it unnecessary to argue further in support of the exemption of 17 Kirkland Street.

We have seen that the second building erected by Harvard College was the president's house. This was erected from funds furnished the college by the Colony of Massachusetts Bay at a time when neither the college nor the Colony had any surplus funds or property to invest for the purpose of an income. We have also seen that the government of the province, at times when the college had no means of its own to devote to such purposes, appointed committees to procure or hire a suitable place for a residence for the president and his family, and appropriated so large a sum as £1000 to build Wadsworth House. As to No. 17 Quincy Street, the present official residence of the president, we have seen that it was built from funds specially left to the college for that purpose, and therefore the college has no right to let it to any one else. Unlike any of the houses in the Williams College case, the president, as we have stated above, has no lease of said house and pays no rent therefor; he is not in sole occupation, because the land about it is in the occupation of the college, and part of the house is at times occupied by other college officers in carrying on the work of the college, and is used by the president while attending to various college duties. College servants have a right to enter upon the grounds assessed with this house and to repair the house. The president occupies the house only so long as he performs the duty of the office of president; he therefore occupies it solely by reason of service, and therefore, as laid down in Massachusetts General Hospital *v.* Somerville, 101 Mass. at 326, he occupies it for the purposes for which the college was incorporated.

The occupants of 25 and 38 Quincy Street and 11 Frisbie Place are deans as well as professors. If the dwelling-house in which the president lives should be held to be exempt because it is essentially a college purpose to have and furnish a house for the president, then as the deans "are charged each with a portion of the admin-

istrative duties which formerly devolved exclusively on the president" (Report, p. 11), it is equally a legitimate college purpose to furnish official residences for them.

In other respects the six houses occupied by the professors need not be considered separately, as the facts and circumstances in regard to each are substantially the same. The occupation of these houses and lots differs from that of the houses in the Williams College case, in that none of the occupants are in sole occupation, the college, other college officers, or the students occupying parts of each for some time each day.

We have pointed out already that these professors cannot be called tenants or lessees, as they have no lease of their premises; but even if they were tenants at will, they still pay no rent and occupy the premises solely by reason of the service they render, and the property is therefore occupied by them officially and for the purposes for which the college was incorporated. The following facts are agreed to in regard to each: "When his salary is voted in the fall of each year, it is fixed at a certain sum 'and the use of house $900' (or other sum), otherwise Professor . . . pays no rent and has no other agreement for his use and occupation of said house, but uses it as said professor and dean" (in cases where he is dean as well as professor).

It will be noticed that this is quite a different arrangement in legal effect from that in the Williams College case. There the salaries of the professors were fixed at a certain sum, the value of the occupation was fixed, and they were paid monthly in cash one-twelfth of such salary less one-twelfth of the value of the occupation (167 Mass. at 507). In that case we have an obligation on the part of the college to pay a fixed sum as salary for services rendered, and on the part of the officers an agreement to pay a fixed amount as rent or compensation for the use of the house. The college paid a salary, and gave the

use of a house; the officers rendered service for the salary, and paid rent for the house. In our case there is no rent paid; the college pays a salary, and gives the use of a house valued at a certain amount in return for services rendered, as it did with the Dunster house; the services rendered are therefore paid for in part in cash, and in part by allowing the officer to use the house. The house is occupied by reason of the services rendered, and not by reason of rent. There can be no doubt that the college has a right to devote its real estate as well as its cash to such use; the college charter authorizes the president and fellows "to make such allowance to them," the officers, "as they shall think fit." Now it cannot be denied that the money which the college pays as salary to its professor is used for the purpose for which it was incorporated. It is just as certain that the real estate which the college "allows" him in part payment for his services is devoted to the same purpose.

It accords with our contention that the Supreme Court of Connecticut within a year has decided that two houses furnished by Yale College for the officers of its observatory are exempt from taxation, under a statute exempting "buildings or portions of buildings exclusively occupied as colleges."

Yale University *v.* New Haven, 71 Conn. 316.

V

Practical and Legislative Construction

We have thus far seen what the judicial interpretations of the statute under discussion have been up to the present time, but we find in the practice of the cities and towns continued for more than sixty years, and in the three enactments since the Revised Statutes of the statute in question by the General Court of the Commonwealth, both a practical and a legislative construction of that

statute which deserve careful consideration, for such interpretations have always been given the greatest weight by this Court.

> A cotemporaneous is generally the best construction of a statute. It gives the sense of a community, of the terms made use of by a Legislature. If there is ambiguity in the language, the understanding and application of it, when the statute first comes into operation, sanctioned by long acquiescence on the part of the Legislature and judicial tribunals, is the strongest evidence that it has been rightly explained in practice. A construction under such circumstances becomes established law; and after it has been acted upon for a century nothing but legislative power can constitutionally effect a change.

Parker, C. J. Packard *v.* Richardson, 17 Mass. at 144.

> On these legislative and judicial practical expositions of the declaration in favor of trials in the vicinity we might repose with confidence, for contemporaneous and continued constructions of an instrument, whether by express judicial decisions or uniform practice, are admitted to be a legitimate ground of interpretation.

Parker, C. J. Commonwealth *v.* Parker, 2 Pick. at 557.

Gray, C. J., in commenting upon the reënactments of the Statute of 1817, chap. 142, in the Revised and the General Statutes, says: —

> They have been constantly applied in practice, and repeatedly expounded by this Court, without a doubt of their validity being suggested, for nearly sixty years. After so long a practical construction and acquiescence by the Legislature, by the Courts, and by all parties to judicial proceedings, it would require a very clear case to warrant the court in setting them aside as unconstitutional.

Holmes *v.* Hunt, 122 Mass. at 516.

These houses, or houses similarly occupied, have belonged to Harvard College ever since the passage of the Revised Statutes, but never till 1897 has the city of Cambridge made any attempt to tax them; they have for

more than sixty years been considered and treated as exempted property under the exempting clause of the Revised Statutes and the subsequent enactments. And not till 1895 did the assessors of Williamstown or any other city or town, with the sanction of this Court, tax property occupied as the Williams College houses were occupied. If this course were due to a misconstruction of the statute, if it were not in accordance with the real legislative intent, it is hardly possible that the Legislature would not have corrected the error by an amendment declaring the true intent and meaning of the act. But instead of any such amendment, we find the General Court, in face of this practical interpretation put upon its act, reënacting the same statute in the same terms in 1860, in 1881, and in 1889. We submit that these reenactments amount to legislative declarations that the practical construction of this statute by the cities and towns is the true construction, and only an act of the Legislature can change it.

But before the General Court shall change this construction of the exempting statute, or narrow the scope of the college, or deny it that encouragement which has at all times been extended to it, the Legislature will have become unmindful of the sacred duty imposed upon it by the Constitution of the Commonwealth, which in the same breath created the General Court and gave renewed life to Harvard College, for not only does the Constitution of Massachusetts confirm to Harvard College all its franchises, property, and immunities, but it admonishes all future legislatures and magistrates to cherish all seminaries, and especially the university at Cambridge, in the following language : —

> It shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them, especially the university at Cambridge;

and

> to encourage . . . immunities for the promotion of . . . arts, sciences, etc.
>
> Constitution of Mass., chap. 5, sect. 2.

This duty is imposed as solemnly upon this Court as upon the Legislature.

SAMUEL HOAR,
WILLIAM SULLIVAN,
for the Petitioners.

BRIEF FOR ASSESSORS OF CAMBRIDGE

Construction of Statute at Issue

The issue involves a judicial construction of Chap. 469, sect. 5, clause 3 of the Statutes of 1889, as applicable to the several properties occupied as above described.

The section under consideration is as follows, exempting

> *Third.* The personal property of literary, benevolent, charitable, and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated.

The general law (Public Statutes, chap. 11, sect. 2) explicitly subjects to taxation all property "not expressly exempted."

Exemptions, thus being an exception to the general rule, are regarded as in derogation of equal rights, and the tendency of the courts is to construe them strictly.

> Redemptorist Fathers *v.* Boston, 129 Mass. 178.
> Mt. Hermon Boys' School *v.* Gill, 145 Mass. 144.
> Cincinnati College *v.* State, 19 Ohio 115.

> It is a familiar principle that no exemption from taxation can be allowed except upon its being fairly shown that it was intended by the terms of the Statutes.

> Third Congregational Society *v.* Springfield, 147 Mass. 396.

History of this Legislation

Prior to Revised Statutes of 1836, certain exemptions had been provided by law for Harvard College, with certain exceptions in favor of local taxation in Cambridge.

Harvard College *v.* Boston, 104 Mass. 489, citing.
Harvard College *v.* Kettell, 16 Mass. 204.
Statutes 1821, Chap. 107, Sect. 6.
Statutes 1830, Chap. 151, Sect. 6.

As the Court, Wells, J., says: —

> This course of legislation led to the adoption of the qualified general exemption contained in Revised Statutes, chap. 7, sect. 5, which was as follows: —
>
> The following property and polls shall be exempted from taxation.
>
> *Secondly.* The personal property of all literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, and such real estate belonging to such institutions as shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated.

This was subsequently reenacted in General Statutes, chap. 11, sect. 5, clause 3, which was as follows: —

> *Third.* The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

This statute appears in Public Statutes, chap. 11, sect. 5, clause 3, in the following form to wit: —

> *Third.* The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated; but such real estate, when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal be exempt for a longer period than two years; and the real estate of such corporations formed under general laws shall not be exempt in any case where part of the income or profits of their business is divided among their members or stockholders, or where any portion of such estate is used or appropriated for other than literary, educational, benevolent, charitable, scientific, or religious purposes.

This last statute is substantially the same as the Statute of 1889, chap. 465, sect. 1 before cited (page 1).

It is apparent therefore that the Revised Statutes codified the existing laws and limited the exemptions of real estate belonging to corporations as the plaintiff to such as "shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated."

That the intent of the Legislature by this provision of the Revised Statutes and the subsequent later provisions as now found in said chap. 465 of the Acts of 1889, was to restrict the terms of the then (1835) existing law is apparent from the construction recently placed upon the statute in question in Williams College *v.* Williamstown, 167 Mass. 507.

But it may be said that this was not the intent of the Legislature for the reason that subsequent to the revision of 1835, to wit: by Statutes 1840, chap. 28; Statutes 1850, chap. 22; and by Statutes 1860, chap. 45, when the Legislature passed statutes to ascertain the ratable estate within this Commonwealth it exempted from the operation and assessment of the State tax the estates belonging to Harvard.

So Justice Wells seems to have said in his opinion in Harvard College *v.* Boston, *supra* 488, in contradistinction as the defendant claims to the later decision in Williams College *v.* Williamstown, *supra.*

The Statutes of 1840, 1850, and 1860 before cited are substantially the same as Statutes 1820, chap. 64, and 1830 (1831 ?), chap. 130, cited by Justice Wells.

The last named statute provides that "the assessors for each city, town, district, or other place within this Commonwealth for the year 1831 shall on or before the first day of October next take and lodge in the Secretary's office a true and perfect list conformably to the list hereto annexed . . . of all ratable estate both real and personal

lying within their city, towns, districts, and other places *not exempted by law from paying State taxes,* expressing by whom occupied or possessed, particularly mentioning dwelling houses, etc. . . .

"And the said assessors in taking the said valuation shall designate the *different improvements of land* and return the list in the following manner . . . excepting all the estates belonging to Harvard, Williams, and Amherst Colleges, and to incorporated theological institutions and academies, and also the estate belonging to the Massachusetts General Hospital and improved for the purposes of that institution."

This exception in these various statutes has reference only to the real subject matter of that clause "the distinguishing of the different *improvements of the land*" next to be more specifically stated, and did not relieve the assessors from taking and lodging with the Secretary a true and perfect list of all ratable estate both real and personal . . . *not exempted by law from paying State taxes.*

Hence it does not appear from these statutes, as may be claimed, that the legislative purpose and intention was to exclude from taxation the houses of presidents, deans, and professors owned by the institutions and occupied by such officers and their families.

Omissions to Tax

The omission to tax these properties for years before (top of page 6 of Report) cannot add anything to the argument in favor of further exemption, if such exemption has all the while not been justified in law. Such a doctrine of prescription as this does not seem to be known in law.

Question at Issue

It being admitted that the plaintiff is one of the corporations named in the section of the statutes now under

consideration, the general question, as applicable to all the properties named in the Report, is whether or not such occupation of the houses and land contiguous thereto is *by the Corporation, or its officers and for the purposes* for which the plaintiff was incorporated.

Williams College *v.* Williamstown, 167 Mass. 507.

If the exemption is not applicable to the houses neither does it apply to the several pieces of land appurtenant to the houses.

Trinity Church *v.* Boston, 118 Mass. 167.

The removal of fences and monuments about and connected with Nos. 11, 17, 25, 37 Quincy Street (Report, p. 4) did not thereby separate the houses from the lands respectively appurtenant thereto.

For convenience and to secure a uniformity in the appearance of the grounds may have been the purpose and reasons for the removal of such fences and monuments.

Officers of the College

It is admitted that the presidents, professors, and instructors are officers of the college. It is so decided in Williams College *v.* Williamstown, 167 Mass. 507.

Meaning of "Occupied"

"Occupied" denotes continuance and full possession. "Occupied by" a corporation denotes a corporate or official occupancy, and not a personal occupancy by one who is such an officer, though only so does he become an eligible occupant; and "occupied for" a special purpose denotes the continuous use the realty is put to, its primary function, the direct purposes to which it is devoted, *i. e.*, a store, residence, bakery, dormitory, laundry, refectory, music hall, schoolhouse, lecture or recitation halls, play rooms, etc., but not a casual or incidental use, or a collateral purpose, that the occupancy may subserve.

> And the exempted realty is also clearly limited to and conditioned upon an occupancy whose purpose is that for which the included institution was incorporated, and the very purpose which includes it among the favored institutions; that is, the purpose of the occupancy and the including purposes must be the same.

To relieve from taxation the property must be shown to have been necessarily occupied by the institution or its officers for the purpose for which the institution was incorporated. The court has manifested no inclination to enlarge the exemption.

Massachusetts General Hospital *v.* Somerville, 101 Mass. 321.

"Occupied for" means the primary purpose of the occupancy, not something incidental, as in case of a parsonage. The occupant may at times worship, yet the primary purpose of the occupation is that of a residence, and is taxable.

A printing establishment built upon land belonging to the college but separate from other land of the college, in which books are manufactured, to be purchased and used exclusively by the students of the college, is not occupied for the purposes for which the college was incorporated.

The primary purpose of the printing establishment is the manufacture of books, though the use to which the books may be put may be of assistance in the education of the college students. The primary purpose of the college is the advancement of learning and education.

As there may be several distinct tenements under the same roof, — one may be under the other, — one may be side of another (Proprietors of Meeting House in Lowell *v.* Lowell, 1 Met. 541); so there may be different and distinct occupancies of the same house belonging to a college; but the occupancy must be either one or the other, either for secular or college purposes; if both, the exemption cannot apply.

It must at least be that the dominant purpose of the occupation by the president and professors (and of the house 17 Kirkland Street) was not private, but that for which the college was incorporated. (Holmes, J., in Amherst College *v.* Amherst, 173 Mass. 233.)

Manner of Occupancy

In reference to the president's house and the houses occupied by the other professors and their families, and following the reasoning in Mount Hermon Boys' School *v.* Gill, 145 Mass. 148, we must see what was the purpose of the occupancy of these houses, — was it for literary, educational, benevolent purposes, or in the language of the constitution "for the encouragement of arts, sciences, and all good literature," or was it for their (the president's and professors') own interests and convenience and that of their families. (Constitution of Massachusetts, chap. 5, sect. 1, art. 1.)

It has been held that rooms occupied by tenants for hire of a corporation established for charitable uses are not exempt, although the income derived therefor was used for such purposes.

Trustees of Chapel of Good Shepherd *v.* Boston, 120 Mass. 212.

This decision was made on the ground that such a use and occupation was not an occupation by the corporation for the purposes for which it was created; the occupancy was for living purposes.

What distinction can there be in the cases at issue in which the houses were occupied by the president and professors with their families?

Was not the real substantial use by them in each case for living purposes very much in excess of that for strictly college purposes? Even the drawing-room and hall, when not in use for strictly college purposes, were occupied as part of the living rooms.

The principal use was not that for college purposes, following the decision in Salem Lyceum *v.* Salem, 154 Mass. 16, 17.

The fact of occupancy by an officer of the college of a certain portion of a house does not create an occupancy of the whole or greater part of the house occupied by his family.

The use of these several houses was not of necessity in order to enable the college to accomplish its work of education, but as the Report says, "partly for his own convenience and partly for the convenience of the college" (Report, pp. 5, 7, 8, 10, 11).

So, also, as to No. 25 Quincy Street (Report, pp. 8, 9) it appears that the occupation thereof by the professor is for the convenience of and not required by the necessities of the college (Report, p. 9).

The president and professors were also in the sole occupation of the respective premises used by each, although at times certain portions are used for college purposes. The real, substantial occupation was for private purposes. There is no evidence that the real control of these houses was other than in the occupants. It does not affect the control of the land connected with the houses that the same was kept in order by the college at the expense of the latter, under the direction of the college superintendent and for the most part by college employees. There is no evidence that the right of the occupant of any house to use the land adjacent to the building is at all interfered with or lessened in this care of the grounds or otherwise. For all that appears in the Report, such care and superintendence is part of the consideration for which the occupant renders his services.

Facts of Occupancy.

The agreed facts then present the seven houses and their plots as family residences, severally occupied by a

man and his family; such occupants of one house being the university president and his family, and of the others, college officials and their families.

Thus these occupancies exclude exemption: —

First, as residential.

Pierce *v.* Cambridge, 2 Cush. 611.
Williams College *v.* Williamstown, 167 Mass. 505.

Second, as personal, private and not official. Temporary uses of a reception room for gatherings of any sort, social, religious, collegiate, are appropriate uses by the occupants in course of their family occupancy, and they no more interrupt that occupancy and initiate another one by the guests than do like appropriate uses of a dining-room, chamber, or other part of the house.

Rent as Affecting Occupancy

The question of rent or lease or the manner of payment of the rent is important only as bearing upon the nature of the occupation and whether the occupation is in fact for the purposes for which the plaintiff was incorporated.

Pierce *v.* Cambridge, 2 Cush. 611.
Massachusetts General Hospital *v.* Somerville, 101 Mass. 326.
Mount Hermon Boys' School *v.* Gill, 145 Mass. 145.
Williams College *v.* Williamstown, 167 Mass. 509.

In Trustees of Wesleyan Academy *v.* Wilbraham, 99 Mass. 603, Chapman, J., says, "In Pierce *v.* Cambridge, 2 Cush. 611, a construction was put upon a similar provision of the statute (*i. e.*, similar to chap. 11, section 5 of the General Statutes) then existing. It was held that although the plaintiff was a professor in Harvard College, yet a house belonging to the corporation was not exempt from taxation while he held it under a lease from them, paying rent therefor." Then the Court goes on to say further, "If he had occupied without taking a lease or paying rent, the Court say it would have been otherwise.

It was held to be taxable, because the present estate was in the lessee and the corporation had only a reversionary interest."

These last statements taken by themselves might seem to appear that the question whether or not the estate was taxable depended upon the fact whether or not he was paying rent therefor.

But upon further reading of the opinion, it is apparent that the decision of the Court was in reality based upon the purpose for which the same was occupied, or to use the language of the Court, "But as it (*i. e.*, the estate in question) is managed, the object not being to make a profit to the funds of the institution, but to benefit the students, it is as really used *for the purpose for which the institution was incorporated* as the buildings, and school apparatus." (The italics are mine.)

Exemption of Church Property

So as to exemption from taxation of church property; "the exemption depends upon the use for which the building in question is intended and is limited by such use."

Old South Society *v.* Boston, 127 Mass. 379.

And this exemption is extended only to such part of the property which was used as a place of worship and for the purposes connected with it, such as the vestry, the furnace and the like.

Lowell Meeting House *v.* Lowell, 1 Met. 158.
Old South Society *v.* Boston, *supra* 379.
Trinity Church *v.* Boston, 118 Mass. 164.

And does not exempt a parsonage.

Third Congregational Society *v.* Springfield, 147 Mass. 396.

Real Purpose of Occupation

Can it be contended that a house owned by a college

located separately anywhere else than upon the ground which forms a part of the college yard in Cambridge, the rooms of which were used for different college purposes incident to the duties of the professor occupying it, "partly for his convenience and partly for the convenience of the plaintiff," should be exempt, because of such a use, and because by such an occupancy the purposes of the college might be assisted and furthered?

So as to a portion of a house, like No. 37 Quincy Street, built by the college upon land owned by it, in some other location, occupied by the professor and his family; can that be said to be exempt simply because of such occupation?

Is not the occupation as much in one case for the purposes of incorporation as in the other, or, in other words, is it not as much for the interests of the college, and are not the necessities of such occupation as apparent in one case as in the other? That is to say, it is apparent the professor must have a home and live somewhere, otherwise he could not transact his duties as such professor; and for the time being, and in the performance of such duties, he is occupying his residence, and in such an occupation he is, as far as the prosecution of his duties is concerned, carrying out in part the purposes for which the college was incorporated, to wit: the imparting of knowledge to the students and the increase of learning to that extent.

Such a rule of construction would be contrary to the rule above cited and cannot be sustained.

The fact that Professor Langdell occupies the house as a professor of law does not change the nature of his occupancy. He may have a number of titles, and if he did it would not affect his occupancy, which is that of a residence for himself and family no matter by what or how many titles he may be called or known.

This differs from the case of Massachusetts General

Hospital *v.* Somerville in this, that the building here is upon land taxed. In that case the land was not taxed and was exempt by reason of the manner in which it was held, and the house occupied by the person, who devoted his time exclusively to the care of the grounds not taxed, was considered by the Court as " being used as an incident only to the general purposes for which the land was held and occupied by the said person 'for reasons of convenience.' "

So in Trustees of Wesleyan Academy *v.* Wilbraham, 99 Mass. 599–603, the land upon which the building was situated was not taxed, and the question there was whether or not the use of the building by the college as a boarding house to cheapen the education of the students took this property out of the exemption, or whether it was within the purposes for which the institution was incorporated. The latter was held.

So in the case of Mount Hermon Boys' School *v.* Gill, the distinction as made by the Court, is whether or not the use of the barn was for carrying out the purposes of the incorporation, to lessen the cost of the education of the students. In this the parties in interest to be benefited, to wit: the students, were first considered.

It would be certainly a forced construction to apply the reasoning of that case in behalf of the students to the case at issue. Nor does it appear by the Report, in any case, that the object of this use by the president and professors was to assist the student and make less the cost of his education; on the other hand, as far as one can infer, it would seem that this method of occupancy, at least, so far as to the houses occupied by the professors and the voting of their salary, fixing the same in the fall of the year at a certain sum, " and the use of the house " variously estimated in value in each case (pp. 7, 8, 9, 10, 11) was an indirect method of producing revenue to the college.

Income Derived from Property

Assuming that the assessed value upon house and land appurtenant in each case is fair, we have, in each instance, the amount saved on salaries and as an investment, as follows : —

11 Quincy Street, total value house and land $19,000, use of house $750, about 4 per cent.

16 Quincy Street, total value house and land $12,000, use of house $500, about 4 per cent.

25 Quincy Street, total value house and land $24,000, use of house $1,000, about 4 per cent.

37 Quincy Street, total value house and land $17,000, use of house $700, about 4 per cent.

38 Quincy Street, total value house and land $12,000, use of house $900, about 7 per cent.

11 Frisbie Place, total value house and land $18,000, use of house $700, about 4 per cent.

making a total revenue, on $102,000 valuation, of $4,550, nearly four and one half per cent. in the form of salaries.

Neither does the gift of the president's house for the presidents affect the kind of occupancy, *i. e.*, residential, and thus bring it within the exemption in spite of such occupancy.

17 Kirkland Street

As to No. 17 Kirkland Street, it appears that the first floor is used as a boarding house, the other floors as sleeping rooms or living rooms for students. It is in the occupation of students, not of the college, and not for educational and scientific purposes of the college.

The reasons heretofore given in regard to the other houses apply with the same force to this house and land and need not be repeated.

Conclusion

The last clause of the section of the statute under consideration provides that as to corporations formed under the general laws, no part shall be exempt where any portion of the real estate is used other than for the purposes for which the corporation was incorporated.

In the case of houses of religious worship those portions not used for such are taxed (Chap. 11, sect. 5, clause 7, Public Statutes).

The statute is silent as to such corporations as the plaintiff, in case of a use of a portion not within the exemption. The most charitable and just action would be to impose a tax upon the plaintiffs to the extent of the property owned and not occupied by them for the purposes for which the plaintiffs were incorporated. This is what the defendants have undertaken to do in the imposition of these assessments.

Therefore judgment should be entered for the defendants.

Respectfully submitted,

GILBERT A. A. PEVEY,

Attorney for the Defendants.

ON January 4, 1900, *the Court rendered its decision affirming the judgment of the Superior Court. At the same time a decision was rendered in the case of Phillips Academy v. Andover, which had been argued before the Harvard College case. The opinion in each case was written by Mr. Justice Morton. As many of the principles, considerations, and authorities applicable to the Harvard College case are stated at length in the Phillips Academy case, and are only referred to but not restated in the Harvard College case, it will be necessary to read both opinions in order to get the full statement of the law applicable to the latter case. These opinions are as follows: —*

TRUSTEES OF PHILLIPS ACADEMY *vs.* ANDOVER

Opinion

Morton, J. This case was heard on agreed facts, and the principal question is whether the property for which the plaintiffs were assessed was exempt from taxation, by virtue of Pub. St., ch. 11, sec. 5, cl. 3, as amended by Statute 1889, chap. 465 which provides that "the personal property of literary, benevolent, charitable, and scientific institutions and temperance societies, incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they are incorporated" shall be exempt from taxation. There can be no doubt that Phillips Academy is an institution within the meaning of the exempting clause, and that, with perhaps a possible doubt in the case of Professor Park, the persons

occupying the various houses were officers of the institution (Williams College *v.* Williamstown, 167 Mass. 505). A more difficult question is whether the property was occupied by them for the purposes for which the institution was incorporated.

It is not easy, and perhaps not possible, to define what will constitute such an occupancy under all circumstances, and we shall not attempt it; but there are some general rules and considerations which we deem it proper to state notwithstanding the disposition which is made of this case.

The occupancy referred to usually will result from the official connection of the officer with the institution and commonly will continue only so long as such connection lasts. The Legislature could have provided as it did formerly in the case of Harvard College (see Tax Act of 1818 and prior and subsequent Tax Acts) that such occupancy of itself should exempt the estate from taxation or even that all of the real estate belonging to a favored institution should be exempt. Previous to the adoption of the Revised Statutes, this seems to have been the case, — with a qualification after a time in regard to Harvard College and Phillips Academy. The exemptions were incorporated each year in the annual tax act and the institutions exempted were described by name, except that beginning with 1801 there was in each act a general provision exempting academies established by the law of this Commonwealth. Phillips Academy came under this general provision, but by a proviso in the Act of 1821 (chap. 107, sec. 6) and in succeeding acts, it was provided (and this is the qualification referred to above) that nothing contained in the act should "prevent the Town of Andover from taxing such real estate belonging to the Corporation of Phillips Academy situate in said town as shall not be under the immediate occupation and improvement of said corporation or of any person or persons connected with said corporation, exempted

from taxation by this act." The persons who were exempted from taxation that were connected or likely to be connected with Phillips Academy were ministers of the Gospel, preceptors of academies, and Latin grammar school masters. These and other personal exemptions relating to "the president, professors, tutors, librarians, and students of Harvard, Williams, and Amherst Colleges, and of all other theological, medical, and literary institutions," were repealed by Statute 1828, chap. 143. The effect of this repeal, so far as Phillips Academy was concerned, seems to have been to cause the omission from the proviso, in subsequent tax acts, of the concluding clause which had provided by implication that real estate belonging to the corporation and occupied by any person connected with it should be exempt from taxation.

By the Revised Statutes, a general rule was established which described in a single phrase the institutions to be exempted, and limited the exemption to the real estate belonging to them and "actually occupied by them or by the officers of such institutions for the purposes for which they are incorporated." (Rev. Stat. chap. 7, sec. 5, cl. 2.) This statute, with certain additions and amendments not now material, has been continued by successive reënactments to the present time. It is manifest that under the Revised Statutes and succeeding statutes, the mere fact that real estate belonging to an exempted institution was occupied by it or by one of its officers, could not be regarded as sufficient without anything more to exempt the property from taxation, and it has not been so regarded. (Peirce *v.* Cambridge, 2 Cush. 611; Williams College *v.* Williamstown, 167 Mass. 505; Amherst College *v.* Amherst, 173 Mass. 232.) In any other view, the words "for the purposes for which they are incorporated" would be unnecessary and meaningless. The omission from subsequent statutes of the word "actually" which was in the Revised Statutes

does not affect the construction. (Lynn Workingmen's Aid Association *v.* Lynn, 136 Mass. 283–285.) Whatever else therefore may be said of the occupancy it must be for the purposes for which the institution was incorporated, and this renders it necessary to inquire into the nature and character of the occupancy. If, taking all of the circumstances and all legitimate considerations into account, it can be fairly said that the purpose of the occupancy is that for which the institution was incorporated, then the property is exempt, otherwise not.

The occupancy contemplated by the statute means, we think, something more than that which results from ownership and possession on the part of the institution, or the use of the property for investment purposes. It must have or be supposed to have direct reference to the purposes for which the institution was incorporated, and must tend or be supposed to tend directly to promote them. In a sense, any occupancy on the part of the institution or its officers may be said to have reference to those purposes and to promote them. But the language of the statute imports, we think, a direct, or what is supposed to be a direct, connection between the occupation and the purposes for which the institution was incorporated, and not an indirect one. It is not enough, for instance, that an income is derived from the occupancy which is applied to carrying on the institution. (Chapel Good Shepherd *v.* Boston, 120 Mass. 212.) At the same time the occupancy may be of the kind contemplated by the statute, notwithstanding that as incident to it rent is received or the pecuniary value to the officer occupying is taken into account in some other manner. (Mass. Gen. Hospital *v.* Somerville, 101 Mass. 319.) The distinction lies, it seems to us, between an occupancy which is for the private benefit and convenience of the officer, and which is so regarded by the parties, as in the ordinary case of landlord and tenant, and an occupancy where, although necessarily to

some extent the relation of landlord and tenant enters into it, the dominant or principal matter of consideration is the effect of the occupancy in promoting the objects of the institution in the various ways in which such occupancy may or will tend to promote them. In the former case the property would not be exempt, in the latter it would; and the fact that the institution incidentally derived some pecuniary advantage from the occupancy would not deprive the property of the exemption to which it otherwise would be entitled.

In considering whether property is occupied so as to be exempt, regard may be had amongst other things to the situation of the institution. If, for instance, it is so situated that desirable residences are not or may not be easily obtained, and those in charge of it are of opinion that such officers as the best interests of the institution and of those resorting to it require can be more easily obtained if the institution provides places for them to live in, and it does so, this may be taken into account in determining whether the occupancy is for the purposes for which the institution was incorporated. Or again, if with the best interests of the institution as an educational institution in view, and for the purpose of enhancing its advantages to students and of promoting discipline and good conduct and greater freedom of intercourse between students and professors and instructors, those in charge deem it advisable that the president and professors and others connected with the institution should occupy residences in the college yard or in proximity to the college buildings, this also may be taken into account. The dominant purpose of the occupancy under such or similar circumstances may be as truly that for which the institution was incorporated, as the occupancy of buildings for recitation purposes, or for offices, or for other like purposes would be. And the occupancy does not lose what may be termed its institutional character and pur-

pose because as incidental to it the officers and their families are provided with homes for the use and enjoyment of which by them compensation is allowed or taken into account in some manner. In many if not most New England colleges and academies, the presence of the families of the professors and other officers has been and is regarded as beneficial to the students and as advantageous to the institution. The occupation, therefore, by them as homes of property belonging to such institutions would not necessarily be inconsistent with the spirit and intent of the exempting clause.

In considering the purpose of the occupancy, due weight is also to be given to the intentions of those in charge of the institution. The institution can only act through agents. In Mass. Gen. Hospital *v.* Somerville, 101 Mass. 319–322, it is said that "what lands are reasonably required and what use of lands will promote the purposes for which the institution was incorporated must be determined by its officers. . . . In the absence of anything to show abuse or otherwise to impeach their determination, it is sufficient that the lands are intended for and in fact appropriated to those purposes;" and again, later, "the presumption is in favor of their judgment and it requires something more than mere difference of opinion upon a matter of opinion especially confided to them, to overcome that presumption." Their conclusions are not final. But if consistent with other facts tending to show that the purpose of the occupancy is that for which the institution was incorporated, they well may be allowed to have a controlling effect.

The question whether in any given case the property is or is not exempt is to be determined by considering all of the facts and circumstances; and the intentions and purposes of those in charge of the institution respecting the use and occupation of the property will or may have a material bearing upon the proper determination of the question.

In applying the principles thus laid down, it is clear that not only may premises used by officers as homes for themselves and their families be so occupied by such officers as to be exempt, but also dormitories and dining-halls, and boarding-houses, gymnasiums, and other buildings intended primarily for and actually devoted to the use and benefit of students or those attending the institution for the purposes for which it was incorporated. The statute is not to be construed narrowly but in a fair and liberal sense and so as to promote that spirit of learning, charity, and benevolence which it has always been one of the fundamental objects of the people of this State to encourage.

We think that there is nothing in Peirce *v.* Cambridge, 2 Cush. 611; Williams College *v.* Williamstown, *supra;* and Amherst College *v.* Amherst, 173 Mass. 232, necessarily inconsistent with the views expressed above. In Peirce *v.* Cambridge, the question as stated in Williams College *v.* Williamstown, *supra,* "was whether the real estate was taxable to Peirce as tenant," etc. The decision was put on the ground that the facts were such as to create in Professor Peirce an estate as tenant for which he was taxable. Perhaps the case might have stood equally well on the ground that the occupation appeared to be rather for the private benefit and convenience of Professor Peirce than for the purposes for which the college was incorporated; so in Williams College *v.* Williamstown the occupation was held by the majority of the Court to be for private purposes. That case stands on its own facts and was not supposed by a majority of the Court to overrule any prior cases or to change the law as it had been previously practised and understood. Amherst College *v.* Amherst followed the Williamstown case and went on the ground that it could not be held as matter of law, which was the ruling of the Superior Court, that the house was exempt, though it was intimated in the

opinion that it could have been found "that the dominant purposes of the president's occupation were not private but those for which the college was incorporated." On the other hand, we think that the conclusions which we have reached are abundantly supported by Wesleyan Academy *v.* Wilbraham, 99 Mass. 599; Mass. Gen. Hospital *v.* Somerville, *supra;* Mt. Hermon Boys' School *v.* Gill, 145 Mass. 139 in this State, and State *v.* Ross, 24 N. J. L. 497, and Yale University *v.* New Haven, 42 Atl. Rep. 87. In addition to these cases, the case of Salem Lyceum *v.* Salem, 154 Mass. 14, should be referred to. The property in that case was held to be unexempt, but it was stated that "if the principal occupation is by the plaintiff for those purposes (*i. e.*, the purposes for which the plaintiff was incorporated) occasional and incidental use and occupation for other purposes might not render it liable to taxation," thus recognizing that it is or may be the dominant purpose which gives character to the occupation. As illustrating still further the effect of intention not only upon the character of the occupation, but as establishing the fact of occupancy for a purpose entitling the property to exemption, see N. E. Hospital *v.* Boston, 113 Mass. 518, and Trinity Church *v.* Boston, 118 Mass. 164. See also Rural Cemetery *v.* Co. Com., 152 Mass. 408. In this last case the petitioner, which was a cemetery corporation, was authorized to purchase additional lands to be "applied exclusively" to the objects of the corporation. It purchased land on which there was a dwelling-house and barns, and it was assessed for the land. At the time of the assessment, no burial lots had been laid out on the land so purchased. But it was held that it could not be said that the land was not devoted exclusively to the objects of the corporation, and that the exemption from taxation of the dwelling-house and barns was justified by the fact that the buildings and their occupation as described were necessary for the business of the

corporation and the management of the cemetery, and the property was accordingly declared to be exempt. This case would seem to show that even if the occupation was required to be exclusively for the purposes for which the institution was incorporated (though we do not think it is) an occupation by an officer and his family might be regarded under some circumstances as exclusively for such purposes notwithstanding the element of private benefit. See White *v.* Bayley, 10 C. B. (N. S.) 227.

Whether the occupancy by Professor Taylor should be referred to his life estate or to his connection with the academy as professor, or whether the academy is taxable for its reversionary interest, we do not deem it necessary to consider now.

Down to this point we are all substantially agreed. But some of my brethren think that the facts are not stated with sufficient fulness to enable us to pass satisfactorily upon the subject thus far considered, and that the agreed facts should be discharged and the case sent back, so that the facts can be presented more fully. Others of my brethren and myself are inclined to construe the agreed facts somewhat liberally and to think that we can decide the case now. But with this expression we yield to the views of those of our brethren who think otherwise, and are content that the agreed facts should be discharged and the case sent back for another trial.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE *vs.* ASSESSORS OF CAMBRIDGE

Opinion

Morton, J. This is an action to recover back taxes that were assessed by the defendants on certain parcels of real estate belonging to the plaintiff corporation situated in Cambridge, which the plaintiff contends were

exempt from taxation under Public Statutes, Chap. 11, Section 5, Clause 3, as amended by Statute 1889, Chapter 465.

The case was heard by a Justice of the Superior Court without a jury on what are called agreed facts, but which we interpret as authorizing him to draw such inferences as he thought warranted; he held that the property was exempt, and found for the plaintiff for the entire amount, and reported the case to this Court in such a manner as to present the question of the assessability of each of the parcels.

We think that the ruling of the Superior Court was right, and that all of the property was exempt from taxation. Many of the principles and considerations and authorities applicable to this case have been stated and referred to somewhat at length in Trustees of Phillips Academy *v.* Andover, *ante*, and we do not deem it necessary to repeat them here.

The history of Harvard College and of like institutions shows, we think, that from the beginning, dormitories and dining-halls have been furnished by the college for the use of the students, and have been regarded as devoted to college purposes. In addition to this, the effect of the decisions in Wesleyan Academy *v.* Wilbraham, 99 Mass. 599, and Mt. Hermon Boys' School *v.* Gill, 145 Mass. 139, is plainly to exempt property applied to such uses. See also Yale University *v.* New Haven, 71 Conn. 316, and State *v.* Ross, 24 N. J. L. 497. We do not think that it makes any difference in principle that the college, instead of furnishing board itself, provides a place, without rent or compensation in any form or a lease or any agreement for a fixed term, for the use of students who club together for the purpose of obtaining for themselves with the assistance of the college, food at cost. The property so used is occupied, it seems to us, for the purposes for which the college was incorporated. Many particulars are stated

in the agreed facts in regard to No. 17 Kirkland Street, which is the parcel that we are now considering, which we do not think it necessary to refer to, as it seems to us plain that the property is exempt from taxation.

The history of the college and of the legislation relating to it also shows, we think, that the president's house, during the earlier years of the college at any rate, was regarded as almost, if not quite as necessary for the purposes of the institution as dormitories and dining-halls. Public money was appropriated by the General Court to build it as it had been to build the college buildings, and the occupancy of it was evidently considered as official. The present house was built with funds given expressly for the purpose of erecting a dwelling-house for the president and his successors in office, and since it was built has been occupied by them and their families. The president is required to live in Cambridge. He pays no rent or compensation for the use and occupation of the house, and has no lease, but occupies it, if he chooses, so long as he performs the duties of president. It, with several of the other houses that were taxed, namely, Nos. 11, 25, and 37 Quincy Street, this being 17 Quincy Street, are now and were at the time of the assessment within the college grounds, and the premises are kept in order and repair, including grading, gravelling walks, fertilizing, and repairing and cleaning furnace, removal of ashes, etc., under the direction of the college superintendent of buildings and the superintendent of grounds and at the college expense. The whole lower floor, "except possibly the kitchen, is used for Class Day, Commencement, and other receptions, and for many hospitalities incident to the president's functions." "The hall and drawing-room are also used for the convenience of the college and the president for meetings of the faculty and committees, for conferences with university officers and students, for calls on university business, and for the

annual meetings of the Corporation at which degrees are voted." The rest of the house consists of the usual living and housekeeping rooms and chambers, and is used by the president and his family as a dwelling-house.

It seems to us that on these facts, the Judge who heard the case was justified in finding that the dominant or principal purpose of the occupancy by the president was that for which the college was incorporated. His occupation, it could be fairly said, was, so far as the University was concerned, official, as the head of the University, just as, for instance, the President occupies the White House, and not in any just sense, primarily or principally for his own private benefit.

The remaining six houses are occupied by professors, three of whom are deans, each charged with a portion of the administrative duties formerly devolving exclusively on the president. Three of the houses, as already observed, are within the college grounds. All of them are kept in order and repair at the expense of the college in the same manner and to the same extent as the house occupied by the president. The halls and drawing-rooms in all of them, except No. 37 Quincy Street, occupied by Professor Langdell, are used, partly for the convenience of the college and partly for that of the professor, for different college uses and purposes incident to his duties as professor, chairman of committees, dean, and the like. In the case of No. 11 Quincy Street, the drawing-room and hall are used by the professor for regular college exercises during the college year. In the case of No. 16 Quincy Street, the professor is Chairman of the Freshman Advisory Committee of the Faculty of Arts and Sciences, consisting of about twenty persons, and he has a great number of interviews in his drawing-room with students and parents. In the case of 25 Quincy Street, the college in 1892 made additions and improvements at its own expense so as to make the house more convenient for the

transaction of college business and the entertaining of guests on college account. The additions as well as the drawing-room and hall are used for different college purposes incident to the several duties of the occupying professor. The parts of the houses to which no reference has been made are used by the professors and their families, and consist of the usual living and housekeeping rooms and chambers. In the fall of the year when the salaries of the professors are voted, they are fixed at certain amounts "and the use of the house $750," or whatever the sum may be; "otherwise the professor pays no rent and has no other agreement for his use and occupation of the house, but uses it as such professor." We think that it was competent for the Justice who heard the case to find on these facts that the dominant consideration in regard to the occupation of the houses by the several professors had reference to the performance of their duties as officers and professors, rather than to the private benefit which they would receive in the way of homes for themselves and their families, and that he was justified in finding that the occupancy was for the purposes for which the college was incorporated.

This case is distinguishable, we think, from Williams College *v.* Williamstown, 167 Mass. 611. In the first place, there was no question in that case as to the taxation of a building used for a dormitory and dining-hall for the students. In the next place, the occupation by the professors in this case clearly lacks the exclusive character which it was held to have in that case. In the third place, no such use for college purposes is shown to have been made of the houses occupied by the professors in that case as appears in this case. In the fourth place, the sums fixed as compensation for the use of the houses in that case were paid and received as rent, and were so treated by the Court. In this case, the sums fixed for the use of the houses were allowed as part of the compensation for ser-

vices as professors, thus tending to show, as said in Mass. Gen. Hospital *v.* Somerville, 101 Mass. 326, that "the occupation was one merely by reason of service" and that the value put upon the use of the house was merely "a convenient mode of adjusting the compensation . . . and not the income or fruit of an estate granted." Lastly, this case seems to be one where the buildings are occupied "with the permission of the college and without" the professors "having any estate therein or paying any rent therefor," in which case it was said in Peirce *v.* Cambridge, 2 Cush. 611, the property would be exempt from taxation. See also White *v.* Bayley, 10 C. B. (N. S.) 227.

The defendant relies on Third Congregational Society *v.* Springfield, 147 Mass. 396, which was a case where a parsonage was declared to be unexempt. The Court held that religious societies did not come within the clause that we have been considering, but within the seventh clause, and that the exemption was limited to houses of religious worship only. That case is not applicable to this.

We think that the judgment of the Superior Court should be affirmed.

So ordered.